CIVIL RIGHTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 7152, AS AMENDED BY SUBCOMMITTEE NO. 5

OCTOBER 15–16, 1963

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CIVIL RIGHTS

TUESDAY, OCTOBER 15, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

EXECUTIVE SESSION

The committee met at 10:35 a.m., pursuant to notice, in room 345, Old House Office Building, Cannon Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Willis, Rodino, Forrester, Rogers, Donohue, Brooks, Tuck, Ashmore, Dowdy, Whitener, Libonati, Toll, Kastenmeier, Gilbert, Corman, Senner, Edwards, McCulloch, Miller, Poff, Cramer, Moore, Meader, Lindsay, Cahill, Shriver, Mathias, Bromwell, and King.

Also present: William R. Foley, general counsel; Benjamin Zelenko, assistant counsel; and William H. Copenhaver, associate counsel.

The CHAIRMAN. Mr. Attorney General, we welcome you here this morning and we welcome your deputy, Mr. Katzenbach and Mr. Marshall, and the committee has requested that you give your views on the civil rights legislation before the committee, particularly with reference to the omnibus civil rights bill which was originally offered and the modifications thereof made by the Subcommittee No. 5.

This meeting is an executive. I understand, Mr. Attorney General, that you have a prepared statement with you.

Attorney General KENNEDY. I do, Mr. Chairman.

The CHAIRMAN. Do you care to have that made public?

Attorney General KENNEDY. Whatever the committee would like, I have no objections to it, Mr. Chairman, whatever the committee would like.

The CHAIRMAN. Have members got copies of that statement?

Attorney General KENNEDY. I believe they do.

The CHAIRMAN. We will make the statement public.

Attorney General KENNEDY. I have with me, Mr. Chairman, Mr. Katzenbach, the Deputy Attorney General, Mr. Burke Marshall.

The CHAIRMAN. I welcome him as well as Mr. Marshall.

STATEMENT OF ATTORNEY GENERAL ROBERT F. KENNEDY; ACCOMPANIED BY NICHOLAS deB. KATZENBACH, DEPUTY ATTORNEY GENERAL, AND BURKE MARSHALL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Attorney General KENNEDY. The statement, Mr. Chairman, is quite lengthy, but obviously this is an important matter and it is an important bill, I apologize to the committee for the length of the statement but I think it was necessary under the circumstances.

The CHAIRMAN. Will you proceed.

Attorney General KENNEDY. Mr. Chairman and members of the committee, the President in transmitting a proposed "Civil Rights Act of 1963" to Congress on June 19 outlined the urgent need for passage of this legislation. The President made clear that enactment is necessary not only to provide legal remedies for long-standing injustices and to alleviate racial strife which is weakening the Nation, but also because our traditions and ideas of right demand it.

I am here today to support the legislation which the President submitted.

Passage of this legislation is as necessary now as when it was first proposed. Every day of delay aggravates the problems of discrimination by hardening resentments and undermining confidence in the possibility of legal and peaceful solutions.

The President emphasized the importance of enacting the legislation in this session when he urged:

> That the Congress stay in session this year until it has enacted—preferably as a single omnibus bill—the most responsible, reasonable, and urgently needed solutions to this problem, solutions which should be acceptable to all fair-minded men—

and by his statement that:

> enactment of the Civil Rights Act of 1963 at this session of Congress—however long it may take and however troublesome it may be—is imperative.

Recent efforts by responsible local, State, and National leaders have ended some discriminatory practices in some communities. But the basic problems remain throughout the country. The need for congressional action and congressional leadership this year is greater than ever.

We are dealing with a national crisis which goes far beyond regional or partisan considerations. Failure to enact comprehensive and effective legislation at this session could have tragic consequences. Only if we act promptly to right wrongs too long ignored or tolerated can we expect the victims of racial discrimination to continue to seek remedies through law rather than in the streets.

A strong civil rights bill can only be enacted if this committee and this Congress put aside partisan considerations and both political parties work together toward that end. Conviction as to the need for comprehensive legislation and belief in the rightness of the cause is no monopoly of either party.

Legislation will result if Republicans and Democrats work together in this committee, in the Rules Committee, and on the floor of the House. Differences as to approach and emphasis must not be per-

mitted to be escalated into the arena of politics—or the country will be the loser.

Former President Eisenhower's recent statements relating to discrimination in education and public accommodations underscore that matters of principle, not of party are here involved. I am confident that view is shared by Chairman Celler, by Congressman McCulloch, and by other members of this committee on both sides of the aisle. It is also the strong view of this administration.

To meet our national needs the law enacted by Congress must effectively eliminate racial discrimination in voting, in public accommodations, in education, and in employment. It must establish the principle that there shall be no such discrimination among the beneficiaries of federally financed programs or activities to which all taxpayers contribute. It should establish a Federal agency to assist local communities in the voluntary and equitable resolution of racial disputes.

Enactment of the President's proposals, which were introduced in this House by Chairman Celler as H.R. 7152, would accomplish these basic objectives. It is most noteworthy, I think, that both the President's message and the accompanying legislative proposals received a broad and enthusiastic support from labor, business and civil rights groups and from whites and Negroes alike.

I am therefore pleased that a subcommittee of this committee has recommended a print of H.R. 7152 which, in many respects, closely follows the bill as introduced. Of course the print, which I am here to discuss today, also makes a number of changes and additions.

I shall discuss the most important of these changes in the hope that my comments will assist the committee in arriving at what the President called "the most responsible, reasonable, and urgently needed solutions."

Title I is designed to provide additional protections of the right to vote. This title builds upon the Civil Rights Act of 1957 and 1960 by outlawing certain discriminatory practices encountered in their enforcement. Additionally, it provides a method for reducing long delays in affording relief to the victims of discrimination. In my judgment, if title I is enacted, it will go far toward eliminating other kinds of racial discrimination. Negro citizens will be afforded the means of making their justifiable demands not only heard but acted upon.

The subcommittee's version of title I differs from the President's original proposals in two major respects.

Section 101 prescribes the same registration standards to all persons, prohibits the rejection of applicants for immaterial errors, requires literacy tests to be in writing, and raises a rebuttable presumption, applicable in voting suits, that a person with a sixth grade education is literate.

The first change has been to make these provisions applicable to State as well as Federal elections. This change eliminates one of the constitutional bases for the legislation, since the power of Congress under article I, section 4 of the Constitution extends only to the regulation of Federal elections. These provisions of the bill would, however, still be supported by the 14th and 15th amendments. In my view, therefore, they would be constitutional even as applied to State elections.

Others do not share my views in this regard. Their doubts both as to the constitutionality and the wisdom of Federal regulation of State elections could impede passage of the bill. It was for this reason, and because we believe that the legislation would be effective whether or not State elections were covered, that the bill we proposed was confined to Federal elections.

The second major change made by the subcommittee in title I has been to require the impounding of ballots cast by persons found qualified to vote under the temporary voting referee procedure. A proviso specifies that if no judicial determination has been made as to the existence of a pattern or practice of discrimination by the time an election is held, all ballots cast by persons qualified pursuant to the act shall be impounded by the court.

If the impounded ballots are sufficient in number to affect the result of the election, they are not counted until a final determination has been made that a pattern or practice of discrimination exists. If these ballots are insufficient in number to affect the result of an election, they are not counted at all.

This amendment destroys the basic purpose of title I. The objective of the temporary referee provisions is to permit qualified voters to cast their ballots and to have them counted without awaiting the determination of prolonged lawsuits.

I want to emphasize that each person who votes under the referee provision will have been found by a court to be qualified to vote under State law.

Since this is so, it is difficult to understand how the State or any individual can claim to have been hurt or prejudiced by allowing such persons to vote and to have their votes counted when cast.

Even if no finding of a pattern or practice of discrimination is ultimately made, this in no way alters the fact that only qualified voters have been permitted to cast ballots.

As a practical matter, this proviso attempts to deal with a contingency which is most likely to occur. This is the possibility that a Federal court may qualify enough voters to affect an election and later find that no pattern or practice of racial discrimination exists. The very fact, however, that a Federal court registers enough persons, after their rejection by a State official, to affect the outcome of an election almost certainly establishes that the officials are rejecting qualified applicants pursuant to a pattern or practice of racial discrimination.

The proviso is also objectionable because it may make the outcome of various elections uncertain. It will be impossible in some cases to determine which candidate has been elected until the court has finally determined whether a pattern or practice of discrimination exists. This could be long after the election. The introduction of this uncertainty is unnecessary and objectionable.

TITLE II

Since the introduction of the administration's bill, title II, which deals with discrimination in places of public accommodation, has become the focus of interest and debate. Despite voluntary efforts, establishments which serve the public generally, but which discrim-

inate against Negroes, continue to be a constant irritant and inconvenience to large numbers of citizens.

Such discrimination is morally offensive to us all. As I stated in earlier testimony it is one of the most embittering forms of racial discrimination, requiring Negroes to suffer humiliation and deprivation that no white citizen would tolerate. No wonder then, it has been the source of more than 65 percent of the 1,580 civil rights demonstrations that have taken place since May.

The bill as passed, therefore, must contain strong public accommodations sections.

In view of the magnitude of the problem, I think it would be fair to characterize title II, as introduced, as a reasonable proposal designed to eliminate the most significant sources of discrimination. Nevertheless, immediately upon its introduction it was attacked as unnecessarily and unwisely invading rights of private property and as being too dependent upon one source of constitutional authority.

The basic purposes of title II are to embody in legislative form a strong expression of the American people's disapproval of racial discrimination in places open to the general public and to eliminate the significant sources of this daily insult to millions of our fellow citizens.

Although the economic consequences of racial discrimination by public establishments are grave, the principle upon which title II stands is a moral one and all forms of racial discrimination are equally objectionable.

One can argue legitimately from this moral principle to the inclusion of all forms of business enterprise within the reach of the Constitution. The administration proposal did not attempt to extend Federal law so far. The focus of title II was upon those businesses which, on the basis of our experience, posed the most troublesome problems of discrimination. It was our view that Congress could legitimately take into account the following:

First, the extent to which businesses potentially affected do in fact discriminate against Negro customers;

Second, the extent to which enforcement in key businesses would induce voluntary practices in others within the same community;

Third, the areas of coverage should be clear to both the proprietors and the public; and

Fourth, the utility and wisdom of promoting local solution to these problems and decreasing the need for Federal regulation.

These criteria were employed in the bill submitted by the President and introduced by the chairman. It was confined to those business establishments which on the basis of current experience have proved to be the most important sources of discrimination and, therefore, the focal point of most of the demonstrations.

That bill specified hotels and motels, restaurants and lunch counters, retail stores and gasoline stations, movie houses, and similar places of public amusement. The coverage was quite explicit. We did not include other establishments which were constitutionally within the reach of Federal regulations, either because they do not customarily discriminate or because we felt that—given a solution to the major problems—removal of these discriminatory practices could be voluntarily induced. We were reluctant to extend Federal power beyond

those areas where it was clearly needed to meet existing problems.

The subcommittee has added to this coverage a catchall which prohibits discrimination in any business operating under State or local "authorization, permission, or license" (sec. 201(c)(4)). This addition meets none of the criteria we thought important. Rather it represents an effort to go the full limits of the constitutional power contained in the 14th amendment.

What businesses are covered by this provision are unclear. It would seem to extend Federal regulation to law firms, medical partnerships and clinics, private schools, apartment houses, insurance businesses, banks, and, potentially, to all businesses which a State does not affirmatively ban. And its application, if a narrower interpretation is proper, is in any event uneven to the extent that it depends upon widely divergent State licensing practices to determine its coverage.

I want to make it clear that I have no objection to broadening the bill's reliance upon the 14th amendment or broadening its scope if the Congress so desires. But invoking the 14th amendment generally is no substitute for specifying the establishments which Congress, enacting national law to solve a national problem, intends to cover.

Surely the first step in Federal legislation is to determine which public establishments present the significant kinds of problems with which Federal power should be concerned. Once the decision is made, all relevant sources of constitutional authority should be drawn upon to support the legislation.

TITLE III

I should like to discuss next the new title III which the subcommittee added to H.R. 7152. This title would authorize the Attorney General to file injunction suits to enforce all the rights covered by section 1983 of title 42—that is, to restrain the denial of any right, privilege, or immunity secured to any individual by the Constitution or laws of the United States. It would also permit the United States to intervene in any suit brought by a private person to vindicate those rights.

It may be helpful to put this new title in some perspective.

The title goes back to the civil rights bill proposed in 1957. It was included then to give the Federal Government a responsibility and power to give effect to substantive constitutional rights denied American citizens—particularly the right of Negro children to equal educational opportunity in accordance with the school cases of 1954. But since 1957 the concept of a title III provision—broad authority in the Attorney General to enforce individual rights—has become a symbol for those favoring faster Federal action to end racial discrimination.

There should be no doubt in anyone's mind of the commitment of this administration to legislation dealing with injustices which have been inflicted for years upon American citizens because of their race—primarily the denial of the right to vote, the denial of equal access to places of public accommodation, and the denial of equal education and employment opportunities.

Title III is not concerned with those matters. Rather it is intended to protect the demonstrations and protests which have drawn attention to problems which have been ignored far too long. But it must be

remembered that these demonstrations and protests are, after all, only means, not ends.

The end we all seek is freedom from discrimination and segregation and equality of opportunity for all Americans, regardless of race or color. Other provisions in H.R. 7152 are designed to achieve that end directly—by providing for the acceleration of school desegregation, by outlawing discrimination in places of public accommodation, by laying down a firm policy of nondiscrimination in programs supported by the Federal Government, and by assuring the basic right to vote.

The 1957 proposal dealt specifically only with voting, and title III then represented an effort to protect other substantive rights. The rights then contemplated—primarily those relating to schools—are now expressly included in the President's bill. Accordingly, title III in the subcommittee print must have a purpose quite different from that of 1957.

As I have said, I am sure title III is included in the bill now in the belief that it will be an effective means of dealing with police excesses which have occurred during racial demonstrations in some cities. These excesses have included the use of police dogs, cattle prods, and even tear gas bombs on peaceful demonstrators, and have, quite frankly, set white policemen against Negro demonstrators in a way that is an affront to the conscience of the Nation.

If title II is in fact an effective and appropriate means of dealing with this problem, it should be enacted. But I think it fair to say that no hearings before this committee—and, indeed no prior hearings on other civil rights bills—provide a basis for a hard analysis of what the passage of this title would entail.

Title III should be considered not as a symbol, but in terms of what it really means. This is particularly true since civil rights demonstrations and the law enforcement problems—Federal as well as local—which flow from them were not considered in 1957, and were not the reason for the original title III proposal.

There are two pertinent questions: Would title III in fact reach effectively what we wish to accomplish in the field of civil rights? What other problems would be involved for our Nation and for the structure of our Government as a result of its enactment?

One assumption of the proposal is that Federal court injunctive processes can eliminate or at least curtail in some way official opposition to racial demonstrations and the abuses that such opposition at times creates. First, this does not go to the heart of the problem which is the elimination of the injustices demanding the demonstrations and is our major task for the future.

Proponents of title III believe it should control local police abuses. I think the committee should first consider the problem that assumption raises.

Title III would not be effective to prevent or punish sporadic acts—such as bombings by terrorists or isolated acts of brutality by individual police officers. Injunctions cannot prevent crimes by unknown persons.

Second, before title II could be used, it would have to be clear that a federally protected right has been or is about to be violated. It would be a mistake to assume that all demonstrations are protected because their aims are consistent with national policy and are sup-

ported by the vast majority of the American people—like peaceful protests against racial discrimination. Limitations may be constitutionally imposed upon the time of demonstrations, their duration, their place, and the number of people. Not all demonstrations are protected by the 1st and 14th amendments. Thus, no matter how bitterly they may be resented, not all offensive police conduct in connection with civil rights demonstrations would be within the reach of title III.

These factors would necessarily involve the Federal courts in determinations, historically made by local police officials, as to how many people should be allowed to protest, in what manner, and at what time of day. This use of the courts to control demonstrations might well be as unsatisfactory to the demonstrators as to the police. In addition, a Federal court would have considerable difficulty anticipating what police action might or might not be justified in the fast changing conditions which frequently accompany demonstrations and counterdemonstrations.

These difficulties point to the basic danger of relying on injunctions to control in advance the actions of local police. One result might be that State and local authorities would abdicate their law enforcement responsibilities, thereby creating a vacuum in authority which could be filled only by Federal force. This in turn—if it is to be faced squarely, Mr. Chairman, would require creation of a national police force. This is a step which is historically, and with good reason, abhorrent to our Federal system. I am sure all members of the committee would be opposed to such a drastic development unless all means of dealing with the underlying injustices fail.

Although aimed at police abuses against racial protests, title III is not so limited. Under the bill, the Attorney General could bring suit for any official deprivation of any federally protected right.

Title III would extend to claimed violations of constitutional rights in State criminal proceedings or in book or movie censorship; disputes involving church-state relations; economic questions such as allegedly confiscatory ratemaking or the constitutional requirement of just compenstation in land acquisition cases; the propriety of incarceration in a mental hospital; searches and seizures; and controversies involving freedom of speech, freedom of worship, or of the press.

Obviously, the proposal injects Federal executive authority into some areas which are not its legitimate concern and vests the Attorney General with broad discretion in matters of great political and social concern.

To illustrate: Which types of disputes should the Attorney General make a matter of Federal concern? Should he exempt disputes involving reading of the Bible in classrooms? If so, on what basis? What criteria should he adopt to determine whether to intervene in a particular case of an arrest for investigation, for example, or the banning of a movie as obscene, or a claim that the rate set by a State public utility commission is unreasonably low?

I do not mean to suggest that these problems are insoluble. Nor do I mean to say that there do not exist in some communities in the United States police practices and systematic repression of Negro rights which could be dealt with more effectively and quickly by Federal action if title III were enacted into law. The question which

must be asked, however, is whether, on balance, these situations are so prevalent and so menacing as to justify creation of such broad Federal discretionary authority.

There is one final point. It is quite possible that the objections will cause concern not only to those who are opposed to any civil rights legislation, but also to those who sincerely believe in civil rights and the substantive provisions of H.R. 7152. This might well jeopardize all civil rights legislation. The committee is in a better position than I to judge this danger, but it is a factor that I urge be considered.

For all these reasons, and after careful reconsideration, I continue to believe that the administration should not seek at this time the broad injunctive authority set forth in title III, but should continue to concentrate on solutions to the substantive racial injustices that are involved.

TITLE IV

The subcommittee has made a number of unobjectionable changes in title IV and generally clarified its application. Several matters are worthy of mention, however.

As introduced, the bill gave the Attorney General limited power to institute or intervene in actions seeking desegregation of public educational facilities. The subcommittee extends this authority to suits involving other State or municipal facilities. This addition is consistent with the basic purpose of the bill and raises no special enforcement problems.

Technically, however, it makes the definition of "desegregation" contained in section 401(b) inadequate and somewhat troublesome. Desegregation of noneducational public facilities, such as libraries, public parks, or municipal golf courses, obviously cannot mean simply "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin"—which is the definition now contained in title IV.

Section 407(a)(3), in effect, contains a definition of "desegregation" adequate to cover both schools and other public facilities. In any event, the term by now has a well understood legal meaning. The courts have used it many times in applying the Constitution to public schools, State colleges and universities, parks, beaches, golf courses, zoos, playgrounds, and other public facilities. It can be expected that they will be able to continue to do so without further statutory guides. Therefore the prefatory definition of "desegregation" can be eliminated.

Sections 403, 404, and 405, as they appear in the committee print of October 2, authorize the Commissioner of Education to offer various forms of assistance to schools having desegregation problems. Sections 403 and 404, in addition, refer to "special educational problems occasioned by desegregation."

The language of the subcommittee version might be taken to suggest that assistance is available only when desegregation was undertaken pursuant to court order. Obviously, it would be undesirable to encourage resistance to desegregation by making a court order a condition to assistance.

Moreover, it is not clear from the bill in its present form that the Commissioner may offer assistance to local agencies seeking to deal with the variety of special educational problems which arise as a result

of the often divergent educational backgrounds and experiences of pupils attending integrated schools.

For example, a prior lack of availability of equal educational opportunities to Negroes will sometimes create curricular, grading, classroom, and other difficulties in racially integrated schools serving children of varied scholastic backgrounds. Such problems exist wholly apart from whether such schools were ever previously segregated, or whether, if they were, desegregation is pursuant to court order or a judicially approved plan.

Thus, it would be helpful if the bill would make it clear that assistance may be given with respect to such problems.

These suggestions would in no way alter the manner in which assistance is to be provided. The Commissioner would still make aid available only when asked by State or local authorities, who would remain fully responsible for selection and implementation of measures adapted to their own local situations.

TITLES V–VII

In title V, the subcommittee has provided that the Community Relations Service may have no more than six employees. This limitation should not be retained in the bill. While it is not expected that the Service will have a large staff, the exact number of its employees cannot be precisely determined beforehand and an express limitation on its size is inappropriate in permanent legislation of this sort.

The Service may prove ultimately to be one of the most useful creations of this legislation. Certainly, it ought not to be prematurely and unintentionally limited because of a lack of clarity with respect to the available size of its staff. In any event, the Congress will always be able to control its size through use of the appropriations power.

The subcommittee revision of title VII—originally title VI—will, I believe, accomplish its purpose with adequate protection to the recipients of Federal assistance.

TITLE VIII

In title VIII, the subcommittee has substituted for the President's original equal employment proposals, a fair employment practices provision identical to H.R. 405, which had been reported by the House Education and Labor Committee and which has been pending before the Rules Committee for several weeks.

This title, like the voting provisions, deals with one of the most basic and important areas of discrimination. The availability of jobs and of equal economic opportunity in general, without respect to artificial barriers imposed because of race, color, religion, or national origin, is essential to any meaningful resolution of the problem.

This is why, in submitting the administration's omnibus civil rights proposals to this Congress, the President strongly endorsed Federal fair employment practices legislation applicable both to employers and to unions. Certainly, nothing can be more important or fundamental to equality than to assure that all citizens have a fair opportunity to earn a living.

I feel most strongly that action should be taken now with respect to fair employment practices. The widespread recognition of the need for a Federal measure assuring equality of job opportunity is

attested by the many other bills submitted by members of both parties to deal with the problem. I hope that the omnibus civil rights bill will, when enacted, include a strong fair employment practices section of the type recommended by the Labor Committee, supported by the President, and included in the subcommittee print.

At the same time, I recognize that there are some experienced Members of Congress who feel that the inclusion of this provision in the omnibus bill could make it more difficult to secure a rule from the Rules Committee and could even jeopardize ultimate passage of the omnibus bill. Whether this would in fact be the case obviously depends upon the bipartisan support which a fair employment practices provision can secure in this committee, in the Rules Committee, and on the floor of the House—judgments which members of this committee are better qualified to make than I.

Therefore, the administration will support a fair employment practices act as a part of the civil rights bill as reported out of this committee, or as an amendment to this bill upon the floor, or as separate legislation to be enacted in this Congress following passage of the omnibus bill.

With bipartisan leadership, support, and effort, this Congress can enact an omnibus civil rights bill and legislation of the type embodied in H.R. 405. I am sure the legislative route to these goals can be agreed upon.

The two new titles incorporated into the bill by the subcommittee represent useful additions. Title IX provides for a compilation of voting statistics by race, religion, and national origin. Such a survey should prove helpful to the Congress in assessing the dimensions of discrimination in voting and aid in measuring the pace of progress in its elimination. The scope of the survey required, however, may be broader than is necessary to meet current problems. The factor of national origin, for example, has been used as a basis of discrimination in voting with respect only to certain groups. Similarly, religion does not seem to be a source of voting difficulties.

Title X allows an appeal to be taken from Federal court orders remanding civil rights cases to the State courts from which they have been removed. While a special statute has long permitted such removal, the nonappealability of an order of remand has made the provision almost useless.

Apart from certain technical suggestions, which I will be happy to supply the committee later, these are then my major comments.

Mr. Chairman, all of us are aware that civil rights problems arouse intense feelings and motions. It is possible for reasonable men to disagree as to the best legislative steps to be taken by this Congress. But it is virtually impossible to take a position with respect to particular problems which will not be strongly attacked by some.

It is for this reason—the fact that these differences are strongly felt—that it will take the highest statesmanship to avoid the morass of partisan politics which could only result in the failure to enact legislation at this session of Congress.

I believe that if legislation modeled upon the President's proposals is passed, it will go a long way toward removing inequities and injustices which are keenly felt by Negroes and, to a lesser degree, by other minority groups.

The legal remedies concern every American's right to vote, to go to school, to acquire a job, and to be served in a public place without discrimination.

But the legislation embodies even more than legal remedies. And I believe this may be its most significant contribution. For this legislation has become an article of faith, testing whether white Americans can put aside sectional and political differences to solve racial problems which can no longer be ignored.

It is a test in the fullest sense of the term—a test which will determine in the eyes of the nonwhite population here in the United States and indeed abroad whether the white population, which controls the economy and the political life of this country, believes in the Declaration of Independence and the Constitution, or just mouths the hallowed words of these two documents.

This is a national crisis which demands that we put aside partisan considerations and work for passage of the strongest possible bill. If the legislation is not enacted, not only will we not have legal means to hasten the end of discriminatory practices which have been allowed to go on for too long a period of time, but Negroes will suffer a loss of faith in the ability of their Government to redress their grievances. The whole Nation will be the loser. And we who are white particularly so, because we will have failed to fulfill the pledge of our forefathers. We will have failed our country.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, I want to make a comment and state that your statement is clear and the most objective and I share your plea for a nonpartisan approach to this very, very difficult problem.

I do, indeed, hope, that we will be able to fashion a bill ultimately along nonpartisan lines.

Are there any questions?

Mr. MCCULLOCH. Mr. Chairman, I would like to make this statement since there has been protestations of the desire to have a nonpartisan approach and to effectively settle what is one of the most difficult and important questions of our times.

I think it goes without saying that the Representative of the Fourth Congressional District of Ohio has a record of nonpartisanship in the field of civil rights that is unequaled but by a few and exceeded by none, and if there are to be partisan political considerations brought into the future consideration of this bill it will not be by the Representative from the Fourth Congressional District of Ohio.

I think in speaking of the nonpartisan approach, Mr. Chairman, both the legislative branch of the Government and all other branches of the Government should cast aside any partisan consideration in arriving at a final conclusion of this matter.

The CHAIRMAN. I just want to make one comment on Mr. McCulloch's statement, that what he says has a great deal of truth and I want to supplement it by saying both the 1957 act and the 1960 act, Mr. McCulloch, under very able leadership on his Republican side afforded real nonpartisanship in the enactment of those bills and I fervently hope that we can approach the 1963 act in the same spirit. I am sure we can.

Mr. FORRESTER. Mr. Chairman.

Mr. ROGERS. Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Attorney General, I take from your statement as it relates to title I that as you outlined, the subcommittee has changed it from Federal to State election and you have no particular objection to that kind of a change?

Attorney General KENNEDY. I have no objection to it. I would want to make sure that we do not lose supporters of title I as it was originally introduced because of the inclusion of State elections, Mr. Chairman.

Mr. FORRESTER. Would you yield for a question at this point?

Mr. ROGERS. Yes.

Mr. FORRESTER. Mr. Chairman, it is conceded by everyone that this is complex legislation. Had that not been true the Attorney General would not have been asked to come down here. I wondered on the asking of these questions if the Chair is going to proceed in the regular way and yield to the various members according to their seniority.

The CHAIRMAN. Yes.

Mr. FORRESTER. Then if that is the case I think probably we better observe that rule.

We will let the gentleman from Colorado proceed, then I would suggest that we go along with Congressman Willis, and so forth. Take them according to seniority.

Mr. ROGERS. We can proceed in that order.

Mr. FORRESTER. You go ahead.

Mr. ROGERS. As a member of the subcommittee I wanted to emphasize a few things.

The CHAIRMAN. Proceed.

Mr. ROGERS. Mr. Attorney General, I also take from your statement that you are not sympathetic to that part of title I which permits you to file a complaint and have the appointment of a temporary referee to determine whether or not people are qualified to vote and have them impounded pending your ability to prove a pattern and practice of discrimination.

Attorney General KENNEDY. Congressman, what happens is that the court makes a determination as to whether a particular individual is entitled to vote in an election. After the court has made that judgment and that determination as to whether an individual is entitled to vote in the election I don't think that vote then should be impounded. I think he should be entitled to vote in the election like everybody else.

The bill as it came out of the subcommittee impounds that vote even after the judge has made his determination that the individual has the right to vote under State law.

Mr. ROGERS. But it impounds them until you prove a pattern and practice?

Attorney General KENNEDY. That is correct.

Mr. ROGERS. And if you fail to prove it then the votes are not counted.

Attorney General KENNEDY. That is correct.

Mr. ROGERS. But you do ask, in title I, that upon application by the Attorney General alleging that less than 15 percent of a certain race are registered voters, the filing of that complaint automatically makes it necessary for the judge to appoint a referee for the purpose of registering voters according to the State law.

Attorney General KENNEDY. Congressman, if I may correct that. It doesn't make it necessary for him to appoint a referee, or he can make the determination himself.

Mr. ROGERS. Do you mean that a judge then has a discretion, if you as Attorney General file a complaint alleging that less than 15 percent for a certain race have not been qualified to vote, upon that allegation, as I understand it, the judge is compelled to appoint a temporary voting referee?

Attorney General KENNEDY. Congressman, he either appoints a referee—can I just explain the procedure?

Mr. ROGERS. Sure.

Attorney General KENNEDY. Or hears the case himself. He doesn't have to appoint a referee. He doesn't have to, he is not required under our legislation to appoint a referee. He can hear the case himself. If he appoints a referee, the referee then reports his finding to the court. The individual is not registered at that time. The judge then hears the case, and then he makes a judgment, based on State law, after hearing all of the facts, as to whether this particular individual can register to vote.

Mr. ROGERS. As I understand from your answers that upon the certification and filing of the complaint and the allegations of less than 15 percent being registered.

Attorney General KENNEDY. Right.

Mr. ROGERS. Either the judge must take some action to hear these matters or appoint a temporary referee?

Attorney General KENNEDY. Right, he sets this machinery in motion.

Mr. ROGERS. That is the machinery provided in title I?

Attorney General KENNEDY. That is correct.

Mr. ROGERS. And we in the subcommittee came up with that portion which said that they would be impounded if the judge hadn't gotten around to the question of deciding whether the temporary referee is doing his duty or whether they were properly registered. If an election came and they had not completed it, had not completed the registration and the judge passed on it, then these ballots would be temporarily impounded until some later date, and as I understand it you think that should be eliminated?

Attorney General KENNEDY. I do, Mr. Congressman.

Mr. ROGERS. Now, as I understand, since the passage in 1960 of the act, you have filed approximately 29 suits under the 1960 act.

Attorney General KENNEDY. I believe there are 35 suits now.

Mr. ROGERS. But to date, out of those suits that have been filed so far you have not been able to get any judge to accept the pattern of practice or appoint a referee, have you?

Attorney General KENNEDY. No, that is not correct, Mr. Congressman. There have been a number of cases where the judge has ruled that there has been a pattern or practice of discrimination.

Mr. ROGERS. I do not think that we had that in the subcommittee. If that is true——

Attorney General KENNEDY. There have been a number, Mr. Congressman.

Mr. MEADER. If the gentleman will yield, I think simply that no referee has been appointed.

Attorney General KENNEDY. No referee has been appointed, that is right.

Mr. ROGERS. Now, you state on page 7 of your statement——

Attorney General KENNEDY. Could I just say that the problem has been that a number of these cases have been delayed.

Mr. ROGERS. Sure.

Attorney General KENNEDY. We have found that there are 200 counties where less than 15 percent of the Negroes are registered to vote. We have found in many, many counties, unfortunately, Congressman, that an individual who is a Negro and perhaps has finished college is not permitted to register and is declared illiterate, while a white person coming into that same registrar is permitted to register even though they might have had difficulty in the second or third grade. We bring cases and the cases have been delayed a number of instances. The election in 1962 went by and he was unable to vote. Now the election in 1964 will come along. You never regain that right. Once the election has gone by he has lost that right to vote. We have suggested in this legislation that if the court finds a particular individual meets the requirements of State law, then that individual ought to be permitted to vote in the election; he shouldn't lose that right while the litigation goes on 4 or 5 years while the case goes to the Supreme Court.

Mr. ROGERS. We thought there were a number of instances, even by virtue of filing a suit, an election day has come and gone, still they have not been able to vote. That is one of the reasons why we wanted to take your proposal of 15 percent and permit the registration and the voting.

Now, I am just explaining to you. Of course, that was your proposal, but in order to make sure that they were qualified under the State law and that the judge had the chance to pass on it, we did come up with the other recommendation of this impounding.

Attorney General KENNEDY. I don't know whether it was understood that the judge himself must pass—not a referee or anybody else—the judge must pass on whether the individual is qualified to vote in the election. Nobody votes in the election under our bill unless the judge has passed on his particular qualification.

Mr. ROGERS. Even under——

Attorney General KENNEDY. Our bill, yes.

Mr. ROGERS. All right.

The CHAIRMAN Will the gentleman yield on that point?

Mr. ROGERS. Yes.

The CHAIRMAN. As I understand it, Mr. Attorney General, we take it that an issue in the 1960 act is whether or not there is an impounding practice. Now, if we amend it as we are seeking to amend it by setting up temporary voting referees the voting referee determines whether or not an applicant is qualified. The court must issue some sort of an edict to the effect that that voter is qualified.

That voter then votes. His vote is counted. Meanwhile, the judge determines that there is no pattern or practice as a result of which that voter's name has been qualified as stricken from the rolls, and yet the effect is that he has voted. That was the reason the members of the subcommittee felt there should be something that they should have impounded.

Attorney General KENNEDY. Congressman, let me say that there is one fact which is not completely accurate. I now understand why you would have that feeling. It is not the referee that makes the determination.

The CHAIRMAN. It is the court.

Attorney General KENNEDY. That is very important. I mean it is not just the referee who makes the decision as to the fact that an individual should be permitted to vote. The court itself makes that determination.

The court decides, applying the State law and hearing the arguments back and forth, as to whether an individual should be permitted to vote in an election. It is litigation that takes place before the judge and the judge finds whether a particular individual should be permitted to vote in the election.

He examines his qualifications. He makes that decision. If he decides that he can vote in the election, applying State laws, we think that would be important.

The CHAIRMAN. You have the other phase of the act which provides that if no pattern or practice is found then that voter's name is stricken from the rolls.

Attorney General KENNEDY. But he is never registered in the first place. He is permitted to vote in the election, Mr. Chairman. He is permitted to vote in the election. If the case itself is unsuccessful then he is just stricken from the rolls and then he has to go back and register.

It is a temporary—it is similar to a temporary injunction. The court decides that he is permitted to vote in that election, he has the qualifications to vote, he participates in the election. Apart from that the court finds there is no pattern of discrimination. That just means that the temporary sort of injunction is no longer in existence, and the individual has to go to the local authorities to register.

Mr. MCCULLOCH. Mr. Chairman, will the chairman yield?

The CHAIRMAN. Yes, I yield.

Mr. MCCULLOCH. The litigation which you have described, Mr. Attorney General, is ex parte litigation, is it not?

Attorney General KENNEDY. That is right, in part.

Mr. MCCULLOCH. The Federal judge substitutes his judgment for the State registrar that the person in question is qualified under State law to vote. Then he is by order or other action of the court permitted to cast his ballot at the immediate ensuing election, is he not?

Attorney General KENNEDY. That is correct.

Mr. MCCULLOCH. The man in question, having been determined by the State registrar not to be authorized to vote, but after his vote has been cast and counted, and not impounded, he is found not to be qualified under the State law, under this proposal, have you not permitted a man to vote who is really not qualified to vote and to have his vote counted, which could be decisive of the election?

Attorney General KENNEDY. First let me say, Congressman, the court is not going to find that this individual was not qualified to vote in the election. What they are going to find——

Mr. MCCULLOCH. I didn't get that.

Attorney General KENNEDY. They are not going to find that this particular individual is not qualified to vote in the——

Mr. MCCULLOCH. Is he going to find that he is qualified?

Attorney General KENNEDY. What they are going to pass on is whether there has been a pattern of discrimination. In my judgment this is not really a practical problem. If the court finds from an examination of individuals who come in and attempt to register, applying State law, that those individuals should——

Mr. MCCULLOCH. Let us confine it to the single voter and then I can understand it better.

Attorney General KENNEDY. The court is not going to pass on the question of whether that single voter——

Mr. MCCULLOCH. Is the court's referee going to pass on the qualification of that single voter?

Attorney General KENNEDY. Going back. An individual comes in and attempts to register. He has to be unsuccessful in registering with the registrar, and this is after we found the 15 percent and filed our action. In the past it has had to be after we filed our action. He comes in and attempts to register. He is prevented from registering. The Federal court then appoints a referee or he appoints himself.

Mr. MCCULLOCH. What does that individual do next after he has——

Attorney General KENNEDY. He goes to the Federal court and attempts to register.

The CHAIRMAN. And——

Mr. MCCULLOCH. All right.

Attorney General KENNEDY. The judge then has appointed a referee or he has decided he will hear these matters.

Mr. MCCULLOCH. Then what does he do?

Attorney General KENNEDY. He hears the argument, examines the facts——

Mr. MCCULLOCH. Ex parte?

Attorney General KENNEDY. Ex parte. The registrar——

Mr. MCCULLOCH. Let's let the judge do it in this particular case and I can follow it better.

Attorney General KENNEDY. He makes a judgment, let's assume he makes a judgment that the particular individual can vote in the upcoming election.

Mr. MCCULLOCH. Then what does that individual do who has been found by the judge authorized to vote?

Attorney General KENNEDY. He goes down and he has an order from the court and he goes down at the next election and presents the order and votes in the election, but he is not registered.

Mr. MCCULLOCH. And that vote is counted?

Attorney General KENNEDY. Right.

Mr. MCCULLOCH. And may be determinative of the election.

Attorney General KENNEDY. Right.

Mr. MCCULLOCH. And if after that it is determined that he was not qualified to vote what recourse is there concerning a counted vote that was illegally cast?

Attorney General KENNEDY. But nobody is making that determination—nobody is making the determination that that particular individual is not——

Mr. MCCULLOCH. Would you please repeat that? I am sorry.

Attorney General KENNEDY. The court is not making the determination, Congressman, that that particular individual is not qualified to vote. What the court——

Mr. McCulloch. He is making the determination that he is qualified to vote? That is the important question to me, Mr. Attorney General.

Attorney General Kennedy. The determination has been made by court that he is qualified to vote. The court then is making another determination of whether there has been a pattern or practice of discrimination.

Now, they might find that there has been no pattern or practice of discrimination. Then this temporary injunction which permits this machinery to come into existence goes out of existence.

Mr. McCulloch. What happens to the vote that has been cast in the meantime?

Attorney General Kennedy. Well, that vote has been counted because he has been found to be qualified to vote.

Mr. McCulloch. In view of that fact is it the opinion of the Justice Department that there should be no impounding provision in this legislation?

Attorney General Kennedy. That is correct.

I go back—than you, Mr. Congressman. I go back to the fact—Congressman.

The Chairman. May I ask, will the gentleman yield?

What is the effect, Mr. Attorney General—just to get this clear—what is the effect of a judge's ruling that there is no pattern or practice as far as the voter is concerned who has cast his ballot?

Attorney General Kennedy. If he wants to vote in the next election he has to go register.

Mr. Rogers. But he has already voted in this election.

Attorney General Kennedy. But you are asking—I have explained what happens in the particular election, and as long as the court order is in existence and the judge has held that this individual can vote in the election he votes in the election. If in the overall case the judge finds that there is no pattern or practice that injunction, that machinery is no longer in existence, and the judge has no jurisdiction over that case any longer. The particular individual, if he wants to vote in the next election has to go out and register to vote.

Mr. McCulloch. Now, Mr. Chairman, will the chairman yield again because I think this is so important if my understanding is correct.

If there is no finding by reason of this inordinate delay, of which we have heard so much—if there be found no pattern or practice or if there be one found a year or two or three later by reason of this inordinate delay, it is my opinion that unless that finding is made the gentleman continues to vote at each succeeding election?

Attorney General Kennedy. That is correct.

Mr. McCulloch. And his vote is counted in each succeeding election?

Attorney General Kennedy. That is correct.

Mr. McCulloch. Even though it may be determinative of the issue.

Attorney General Kennedy. That is correct.

Mr. McCulloch. And there is no recommendation that the vote be impounded.

Attorney General Kennedy. That is correct.

Mr. McCULLOCH. That is the thing that is so important to me. I don't think an issue should be decided, Mr. Chairman, by a person who is not qualified to vote. I do not think I should be elected, Mr. Chairman, by people who are not qualified to vote.

Attorney General KENNEDY. Mr. Congressman, that is the key to it. This man has not been found not qualified to vote. He has been found qualified to vote.

Mr. McCULLOCH. He has been found qualified to vote by a Federal officer in an ex parte proceeding but later may not be in accordance with fact or law and he may have voted improperly under the recommendation of the Justice Department. Notwithstanding all those facts, the vote is cast, the vote is counted. It may be determinative of an election, and it is not impounded.

The CHAIRMAN. Mr. Attorney General, may I say this in this regard: as I understand it the present law has proved ineffective because of inordinate delays, decisions as to pattern or practice have taken 2 years. Meanwhile elections have intervened and there is no appreciable results.

Attorney General KENNEDY. That is what——

The CHAIRMAN. Nobody votes. The purpose of this new provision is to turn on the switch as it were, to get things moving as rapidly as possible, and you provided for a temporary relief, just like you provided for temporary relief by way of an injunction, and the application is made to the court on your assertion of the 15 percent and then machinery now starts rolling, and the court, if it appoints a temporary voting referee, any individual who has had his qualification denied on the ground of discrimination, has a right to go to that referee and have his case determined whether he is qualified or not.

The referee then must get an order of the court to determine whether that voter is qualified or not qualified. He then tries to vote. If he is not permitted to vote the court can issue an order requring the constituting authority of the State to permit him to vote, force him to vote. If there is no vote the person who is challenging the vote or refuses to receive the vote is guilty of a contempt of court on a court order.

Now, however, the voter has voted, the judge later on, maybe 5 months, 6 months, determines that your allegation about pattern or practice does not exist. The effect of that is to nullify all the temporary proceedings. Does that include the qualifications of the voter to vote who has voted?

Attorney General KENNEDY. No, he doesn't pass on that particular individual, Congressman. That has already been determined by him. What he does is say the Federal court no longer has jurisdiction over this matter. If the individual wants to vote in the next election he has to go down and register.

The CHAIRMAN. That is what worries most of the members of the committee. Is the effect of that decision no pattern or practice?

Attorney General KENNEDY. It has nothing to do with that particular case. The individual has been found to be qualified to vote by a Federal court.

Mr. MEADER. Will the chairman yield to me?

Mr. MILLER. Will the chairman yield?

The CHAIRMAN. Mr. Miller.

Mr. MILLER. Here is what I can't seem to understand. The only justification in the first place for substituting a Federal officer or a Federal judge for a State voting registrar is because there is an allegation of a pattern or practice of discrimination.

Attorney General KENNEDY. Well, where we found, Congressman, that less than 15 percent of the Negroes in a particular county are registered to vote.

Mr. MILLER. Unless you found?

Attorney General KENNEDY. That is correct.

Mr. MILLER. But I mean that is all ex parte. In other words, go back to the illustration that you made of the college graduate, let us say, who is refused permission to vote by the local registrar. He goes to the Federal court, to the Federal judge, on an ex parte proceeding and a Federal officer is now intervening and superseding the prerogatives of the State registrar. This fellow is alleging, let us say, that he cannot register because of the discriminatory actions of the registrar, on illiteracy, or whatever grounds it may be. The registrar is not present at this proceeding at all. So the judge or the referee finds him eligible to vote and he gets an order permitting him to vote, and he goes down and votes, and the vote is counted.

Now, subsequently, the court or the referee finds no pattern or practice and on a litigated matter, where the registrar, the State officer is permitted to appear, it is determined that this fellow wasn't qualified to register because of a residence requirement or because of something else, and in fact the registrar was right in not permitting him to register. But this is months after the election and months after he has cast his vote and his vote was counted. Now, how do we eliminate the possibility of having someone elected on votes which are illegally cast in an election. Never mind the next time or he has to go register again. I am talking about the election right now, coming up next month in Mississippi or Kentucky, where we have two gubernatorial races. Suppose people vote in that election and their votes are counted and then subsequently in December or January or February the judge or the referee finds no practice of discrimination. What happens to the elections of November 1963 when you are substituting a Federal judge for a State officer in determining the legality or the right of this person to vote?

Attorney General KENNEDY. Let me say first, Congressman, that it can be challenged. This is an ex parte proceeding, but the registrar, within 10 days, or the local officials, can come in within 10 days and challenge the finding of the court which permits this particular individual to vote in the election.

Secondly, this follows the practice which already exists on the books in the 1960 legislation. This is the same procedure that you follow at the present time. Under the 1960 act, an individual can come in and vote on the order of a Federal court.

Mr. CRAMER. Would the gentleman yield?

Mr. MILLER. Yes.

Mr. CRAMER. That is only after the finding of the pattern or practices in the 1957 act. Is that correct?

Attorney General KENNEDY. That is correct.

Mr. MILLER. But that is the difference. I don't worry about that, once you establish the pattern of discrimination, but in this proceed-

ing you are substituting a Federal judge for a State official and you are allowing him on an ex parte decision to allow someone to vote. A Federal officer would not have a right to make this determination and to supersede the prerogative of the State official unless there is found a pattern of discrimination. That is the $64,000 question.

Attorney General KENNEDY. Really, Congressman, it comes down to two questions.

The first is whether this particular individual has been denied the right to vote in an election, and the Federal court makes that kind of determination, makes that kind of a judgment based on the particular individual. That can be challenged—it can be challenged by the local officials, it can be challenged by the registrar, and the Federal court will make the final determination.

What I come down to, Congressman, is the fact of what the situation is in the country today. Congressman McCulloch said he didn't want to be elected with illegal votes, but the fact is there are people elected now in these 200 counties who are elected because individuals are being permitted to vote illegally.

Now, we cannot process these cases this fast and these individuals are going to continue to be denied the right to vote in elections because of the fact that this kind of situation exists.

What we are trying to do, Congressman, is to enable them to participate in elections.

Mr. MILLER. I am all for the objective.

Attorney General KENNEDY. But this has gone on for a long, long period of time. I would say to you certainly it has been the finding of my predecessors that you cannot get through these cases—year after year goes by. We have had cases for 2½ years and we still don't have final determination on them. We know of a lot of individuals who should be able to vote in elections and won't be able to vote. Their rights are being denied them.

I think the Federal court under those circumstances, in that situation, where it makes a finding in a particular case when the facts are given to them, these are Federal judges that come from these areas, the Federal judge is from that area and they make a determination that this particular individual, hearing what the facts are, has been discriminated against.

Mr. MILLER. Mr. Attorney General, if I can make a remark, I do not think there is anything sacrosanct in a Federal court or judge. The point that concerns me is that all qualified people be entitled to vote. I am just as much opposed to having people elected in a community where people are denied the right to vote on grounds of discrimination, as to have people being elected on ballots cast that should not be counted.

The CHAIRMAN. This is a hearing, it is not ex parte, the determination is made after hearing all sides.

Mr. MILLER. That is the point.

Attorney General KENNEDY. It can be challenged.

The CHAIRMAN. You must read the 1960 act——

Mr. MILLER. Under these rules can it be challenged?

Mr. MCCULLOCH. Will the gentleman yield? It can be challenged but it might be too late to challenge it; the election might have come and gone and the ballot counted.

Attorney General KENNEDY. Of course, it is true also under the 1960 act.

Mr. MCCULLOCH. I have no brief for any defect in the 1960 act although I had some part in preparing it.

The CHAIRMAN. Is the order of qualification by the court, is that after argument?

Attorney General KENNEDY. It can be challenged by the local registrar or the local official.

The CHAIRMAN. Then there is an argument.

Attorney General KENNEDY. That is correct.

The CHAIRMAN. So, it is not ex parte.

Attorney General KENNEDY. No; it is not ex parte.

Mr. CRAMER. Would the gentleman yield?

The CHAIRMAN. I will yield.

Mr. CRAMER. There is no question but what the hearings are ex parte in the first instance, whether it is before the court or a referee: is that not correct?

Attorney General KENNEDY. I think I explained that originally——

The CHAIRMAN. Only before the referee.

Attorney General KENNEDY. No; also before the court.

Mr. CRAMER. Before the court or the referee; it is ex parte. But the registrar has a right within 10 days to come in and challenge the finding of the referee or the court, under the rules established under the 1960 act.

Attorney General KENNEDY. That is right.

Mr. CRAMER. Now, what are those rules? In the first place, whether there should be a hearing is discretionary with the court.

A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

So, the right of holding the hearing is discretionary with the court, and secondly, it is limited on certain issues on the record established before the referee, who doesn't have to be a lawyer, by the way and only has to be a voter in the district involved, is that not correct?

Mr. MCCULLOCH. Will the gentleman yield?

Attorney General KENNEDY. I would just like to say the registrar does not have to be a lawyer either.

Congressman, I just come down to the fact that this is a fundamental right in the United States and the most basic of all rights, hundreds and hundreds of thousands of our fellow citizens are being denied the right to register and vote in an election and election after election goes by. In the State of Mississippi you have 25,000 Negroes registered out of a potential voting population of many more.

Some of these cases which we are now processing take 2 or 3 or 4 years, and during that period of time we are trying to get some interim relief for these individuals. I do not think there will be conspiracy.

Mr. MCCULLOCH. I want to reply to that.

Of course, I agree with everything you say. In a representative republic the very cornerstone of that society is the elective franchise.

but in remedying conditions which are not good we do not want to give medicine that is as bad as that which we seek to cure.

I just wanted to say this because there was some question raised of whether or not this is an ex parte hearing. Either I have read the proposal entirely incorrectly or it is an ex parte hearing in the first place.

Attorney General KENNEDY. That is correct.

Mr. MCCULLOCH. Now, that is my memory from law school, but I just asked counsel to pick up the only authority that is at hand, Black's Law Dictionary, and this is how Black defines "ex parte": "On one side only." Is the other side represented in this initial hearing? Of course not. "By or for one party." There is only one party involved in this first determination. "Done for or in behalf of or on the application of one party only."

Mr. CRAMER. Would the gentleman yield?

Mr. MEADER. I thought the gentleman from Colorado had the floor. Everybody else has been yielding. If he has the floor I would like to ask him to yield to me.

The CHAIRMAN. The gentleman from Colorado has the floor.

Mr. MEADER. Mr. Chairman, will the gentleman yield to me?

Mr. ROGERS. Mr. Chairman, I will yield to Mr. Meader for a question.

Mr. MEADER. I just want to call the attention of the committee and the Attorney General to the provisions of the 1960 act. I might say that the provision I will read applies after a pattern or practice has been found by the Federal judge which gives him this authority to assume powers to register applicants under State law. The provision is as follows:

> Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application.

Attorney General KENNEDY. I do not have any objection to that being——

Mr. MEADER. The point I am making——

Attorney General KENNEDY. That is just 20 days, Congressman, I have no objection to that.

Mr. MEADER. The point I am making is that in the 1960 act, after a court finding that a pattern or practice existed and being vested with jurisdiction to make the determination of eligibility to vote, the act still provides for the provisional voting, if the application is made 20 or more days before the election the court has to make his determination, and if it is made within 20 days prior to the election the court may make a determination authorizing the applicant to vote in that election. But even the the act provides for impounding his ballot.

Attorney General KENNEDY. I would be glad to put that in here also, Congressman; I have no objection to that.

The judge will have sufficient time, which was the purpose of that. If it is filed within 20 days we would impound the vote.

Mr. MEADER. My point is that in the 1960 act, where a pattern of practice has been found and the judge is vested with this authority to determine eligibility of voters, we make provision for impounding ballots, but now you propose in your temporary voting referee provision and for the referee or judge to permit a person to vote before a finding of a pattern or practice, and have his vote counted regardless of whether it is ultimately determined that there is a pattern or practice.

Attorney General KENNEDY. Congressman, that is just for 20 days. If he applies within the 20-day period before an election then it is impounded. I would have no objection to that. That is just so he would have sufficient time.

Mr. LINDSAY. Will the gentleman yield for one question?

Mr. ROGERS. Yes.

Mr. LINDSAY. It would be true, would it not, that regardless of any pattern or practice before you had this coming into play, if it were a non-ex parte proceeding, that the Federal court would have the power in any event to declare that the citizen was qualified to vote, he had been denied his right to vote and he would be registered at that point, would he not?

Attorney General KENNEDY. That is correct.

Mr. LINDSAY. So they would not even need any new law if it was an adversary proceeding as I understand; is that not correct?

Attorney General KENNEDY. I think that is correct.

Mr. ROGERS. Mr. Attorney General——

Mr. LIBONATI. Mr. Chairman, what is this, a private conversation? I would like to ask the General a few questions. This protocol is getting worrisome. I mean, after all, this is my amendment here. [Laughter.]

The CHAIRMAN. Will the gentleman from Colorado yield to the gentleman from Illinois?

Mr. ROGERS. I certainly will.

The CHAIRMAN. Mr. Libonati, you have the floor.

Mr. LIBONATI. General, what I am thinking of is the practical application of this provision, not its intent. Take, for instance, a person elected to a State office, in the house of representatives or the senate. The local canvassing board, Cook County is the election commissioners, certify the canvass. That goes on to the State canvassing board. The State canvassing board certifies the canvass, the man is duly elected and they send the canvass to the secretary of state. He issues the certificate upon that canvass.

The house of representatives and the State senate at the State levels are the judge of their own members.

Now, they will naturally certify to the speaker of the house or the Lieutenant Governor, the names of the duly elected officials of the senate and the house.

Can anyone ask them to step aside to take the oath, at the formality of their being inducted into office? What is the involvement then with the Federal authorities and the Federal court? Can they intercede to prevent the duly elected official by the electorate, of the district taking his seat?

That is the question here: How far can the Federal authority, through the Federal courts, implement this legislation and deter the

State or the local authority, whether it be aldermen, a judge, and so forth, from being vested with the powers of his office to which he was duly elected through the certifying canvassing boards, canvassing the votes at the respective levels?

The CHAIRMAN. Is not the time passed to ask that question? We did almost that in 1960.

Mr. LIBONATI. But I am telling you the effect of this provision. Is this provision going to deter through any Federal procedures the actions of a sovereign body, at whatever level that sovereign body operates, whether it is at the State level, the county level, the city level, the township level, or the village level?

Now, certainly we do not want to lead the Federal Government by legislation into an area where they are impotent to enforce the purposes for which this legislation is intended to cover.

Is that right, General?

Attorney General KENNEDY. I think, yes.

Mr. LIBONATI. I mean, that is one of the phases that you commented upon on the confusion and the questions involving the State procedures with the Federal procedures on a question involving the casting of these votes or noncasting of these votes which would affect an election.

Attorney General KENNEDY. Yes.

Mr. LIBONATI. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Attorney General, in the 1960 act, and previous legislation dealing with elections, only dealt with the qualifications under the State law.

Now, this proposal in title I does not change the State law in any manner whatsoever, does it, as indicated by your statement on page 7?

Attorney General KENNEDY. That is correct.

Mr. ROGERS. I want to emphasize that each person who votes under the referee provision will have been found by the court to be qualified to vote under State law, and it is not the intention of title I to invade the State field?

Attorney General KENNEDY. That is correct.

Mr. ROGERS. And on page 5 of our so-called confidential print, we do change the bill that was sent up from the Justice Department wherein we say that there shall be a rebuttal presumption where literacy is a question, that if he has a sixth grade education it is presumed he has the qualification to vote.

Now, that does not interfere with the State laws?

Attorney General KENNEDY. No, it does not.

Mr. ROGERS. Your interpretation of it.

Now, the next one, title II, you emphasize on page 11 of your statement that you want to make it clear that you have no objection to the broadening of the bill with reliance upon the 14th amendment, broadening its scope if Congress so desires.

Now, my question is in the face of—and you do raise the question that since we have placed in title II any authority under the State law, that is to say anyone who may get a license or who may be dependent upon a State's action to perform any services within the State, it should not feel that we should either spell that out or not extend it because you say that it might lead to discriminations as

pointed out on page 11 where we had a catchall which prohibits discrimination in any business operated under State or local authority.

In view of the statement made by—or the concurring opinion by Justice Douglas in the *Louisiana* case, do we have any other alternative other than to make public accommodations free of discrimination, be it of any nature, if his reasoning is to be followed?

Attorney General KENNEDY. Which decision? Are you talking about his minority opinion or his concurring opinion?

Mr. ROGERS. No, it is a concurring opinion in the *Lombardi* case——

Attorney General KENNEDY. Where he says everybody has a constitutional right to access to all of these establishments. I do not think that has been accepted by the Court generally, Congressman.

Mr. ROGERS. But the Court on the 20th of May handed down the Greenville, S.C., case, and it reversed the *New Orleans* case and it reversed the two from Alabama and Georgia, and just Monday of this week sent back a number of cases.

Attorney General KENNEDY. Right.

Mr. ROGERS. Wherein in effect they said that every statute of a State and every city ordinance which in any manner permits discrimination is absolutely void and they cannot be punished as a result therefor.

Attorney General KENNEDY. I think that is correct; and that has been accepted by the Court.

Mr. ROGERS. Now that being the accepted law, do we not have some obligation, if that is the law of the land, to broaden this public accommodations——

Attorney General KENNEDY. I am in favor of that step, Congressman, where there is a statute or ordinance by the State or by the local community requiring these kinds of practices then I think that it should be covered by the 14th amendment and I think we have every right and authority to cover it. But it is done in this legislation.

What is done in this legislation, however, is to go beyond that, under the 14th amendment you cover all businesses, all establishments, in my judgment, even though there is not a State or local official connection and that is where I think the problem arises.

Mr. ROGERS. But you went so far——

Mr. FORRESTER. Mr. Chairman——

Mr. ROGERS. You went so far in the *New Orleans* case to say a custom or practice.

Mr. FORRESTER. Mr. Chairman, may I make a statement?

The CHAIRMAN. Yes.

Mr. FORRESTER. I asked the Chair and the Chair ruled, I understand, that we were going to permit the gentleman from Colorado to have the floor. After he had finished that privileged the chairman was going to observe the rule and yield to each member of this committee according to their seniority.

The CHAIRMAN. Yes.

Mr. FORRESTER. I ask that and I want to say I recognize the fact the Attorney General is a busy man. Knowing that nothing was said about the House being in session, I do not raise the point right now, but will the Chair tell me how long do we intend to proceed today?

The CHAIRMAN. Well, in that connection may I ask the Attorney General whether he would care to come back this afternoon?

Attorney General KENNEDY. I will do whatever the chairman would like.

The CHAIRMAN. Mr. Rogers may continue.

May I suggest that each member be reasonable in the time allotted to him because a great many members wish to ask questions.

Mr. ASHMORE. Mr. Chairman, we have a Private Calendar today, I have just been reminded of that and there are a number of bills there, and they come up first.

The CHAIRMAN. Let us go on for a few minutes, then.

Mr. ROGERS. Now passing on to title III which I take from your statement you feel that too much authority is being given to the Attorney General.

Attorney General KENNEDY. That is correct.

Mr. ROGERS. And this you feel?

Attorney General KENNEDY. Under the circumstances I do, Congressman.

Mr. ROGERS. You feel that some authority should be given the Attorney General in those cases where there may be abuses under the 14th amendment?

Attorney General KENNEDY. Yes; I think that the way to approach this problem, Congressman, as I said in my statement, is to try to meet the substantive injustices, I think that if the rest of this legislation is passed which deals with voting, which deals with public accommodations, which deals with education, which deals with employment, I think that the reason and purpose for many of these demonstrations and what occurs following the demonstration, I think much of that would disappear. I think that is the way to approach this matter. I think it is difficult for Congress to draw up any legislation which is going to define what is a good demonstration or what is a bad demonstration; where the Attorney General should go in, where the police power is adequate, where it is inadequate.

I think it is very difficult for you to draw those narrow lines of where you would approve of the Department of Justice or the Federal Government going into these matters and, as I say, I think it is an extension of Federal authority which I think I would be reluctant to see Congress take.

I think that we can deal with this problem. I think that the problem, the racial problem in the United States, is very difficult, but I think that looking at it as reasonable men and making a determined effort that we can deal with them.

I think there are certain substantive actions that need to be taken by Congress, but I do not think that we should go so far that we would regret giving this kind of power.

Mr. ROGERS. The reason I asked the question is you on page 15 of your statement said:

> Second, before title III could be used it would have to be clear that a federally protected right has been or is about to be violated.

Now that, as you know, is what we did in title II. We took section 1983, and put it under the Constitution and laws of the United States, and that is the only thing that we were covering when we authorized the Attorney General to intercede or intervene.

Now what I want to know is, is there any language that you would like to have us use so that we could have these federally protected rights taken care of by the Attorney General if the necessity arises?

Attorney General KENNEDY. What I would like to see, Congressman, is the passage of the legislation that is the substance of the legislation that has been recommended by the President. I think that is the way to approach this problem. I think it is very difficult, if not impossible, to draw up legislation in this field which would not give, which may be aimed at a particular problem but which would not give the Attorney General and the Department of Justice and the Federal Government broader power in this area.

Mr. LINDSAY. Mr. Rogers, would you yield at that point for a question?

Mr. ROGERS. Yes.

Mr. LINDSAY. I would like to ask this, if the proposed title III were not in effect would there be power or does the present bill give the power to the Attorney General to initiate civil injunctive suits in cases involving municipal golf courses, swimming pools?

Attorney General KENNEDY. I am in favor of that.

Mr. LINDSAY. But my understanding of title III is that title III is designed to cover those areas.

Attorney General KENNEDY. It is in title IV.

Mr. LINDSAY. As much as the other areas that you are objecting to?

Attorney General KENNEDY. It is in title IV, I believe.

Mr. LINDSAY. Title IV is broad enough to cover all of those?

The CHAIRMAN. I wish to announce the Private Calendar is being called. When can you return, Mr. Attorney General?

Attorney General KENNEDY. 2:30, Congressman?

The CHAIRMAN. 2:30. We will then adjourn until 2:30 this afternoon.

Mr. WHITENER. Do we have permission to sit?

The CHAIRMAN. We have no permission to sit, does anybody wish to make an objection?

Mr. WHITENER. None of us will object, but you know they will.

The CHAIRMAN. Of course, Mr. Attorney General, you know if any Member of the House objects to our sitting we cannot sit. We will not be able to sit until tomorrow morning in that case. I hope nobody will make that objection.

Mr. MILLER. But anybody in the House can make the objection.

The CHAIRMAN. I said anybody.

Mr. MILLER. I am not going to make it.

(Thereupon, at 12:15 p.m., the committee adjourned to reconvene at 2:30 p.m. this day.)

CIVIL RIGHTS

WEDNESDAY, OCTOBER 16, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

EXECUTIVE SESSION

The committee met at 10 a.m., pursuant to adjournment, in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Feighan, Willis, Forrester, Rogers of Colorado, Donohue, Brooks, Tuck, Ashmore, Dowdy, Whitener, Libonati, Toll, Kastenmeier, Gilbert, Corman, Senner, McCulloch, Poff, Cramer, Meader, Lindsay, Cahill, Shriver, Mathias, Bromwell, and King.

Also present: William R. Foley, general counsel; Benjamin Zelenko, assistant counsel; and William H. Copenhaver, associate counsel.

The CHAIRMAN. The committee will come to order, please.

The Chair wishes to read a brief statement.

The statement with respect to civil rights legislation made yesterday by the Attorney General and his testimony today before the committee have done much to clarify the administration's position——

Mr. POFF. Mr. Chairman, would the gentleman yield?

The CHAIRMAN. Yes, sir.

Mr. POFF. I suggest that it might be appropriate to wait until the ranking minority member of this committee arrives before we proceed, especially as it appears that there is a lack of a quorum.

The CHAIRMAN. Of course, if there is a point of order that there is an absence of a quorum, we will wait. [Pause.]

We will proceed now.

The statement with respect to civil rights legislation made yesterday by the Attorney General and his testimony today before the committee have done much to clarify the administration's position with respect to the bill recommended by the subcommittee. The Attorney General stressed the need for legislation without further delay, as well as the necessity for bipartisan support for civil rights in Congress.

The administration proposes a strong civil rights bill and one that I feel both Democrats and Republicans can support. The urgency for bipartisan legislation at this session is so strong that I intend to put aside my own feelings with respect to the desirability of provisions in addition to those recommended by the administration. I shall exert every effort toward achieving a bill along the lines recommended by the administration to be reported out of this committee within 2 weeks.

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In addition thereto, I desire to state that I hope that the appearance of the Attorney General can be limited to this morning's session, if possible. And I shall recognize Democrats as well as Republicans for the purpose of propounding questions. We have about 2½ hours this morning. In view of the fact that Democratic members of the committee asked questions yesterday, I shall allow an hour to the Democrats and an hour and a half to the Republicans for the purpose of making inquiries of the Attorney General.

I believe the main purpose of the Attorney General's appearance here has been served. Our purpose, you may recall, was to get the views and opinions as to the civil rights legislation before us, particularly with reference to the version offered originally and as changed by the subcommittee. This is not a public hearing and the responsibility for the drafting of a civil rights bill is within the Judiciary Committee itself and not outside the Judiciary Committee. It is a legislative function and not an executive function. And I repeat, in view of the fact that the purposes of the Attorney General's presence has been served in the sense that he has given his views fully as to what the opinions are concerning these two versions of the bill, I hope that his appearance can be limited to the morning session.

Mr. FORRESTER. Mr. Chairman, yesterday the Chair ruled, I think properly so, that according to seniority that the various members be allowed to interrogate the Attorney General. I have not asked any questions, and I certainly would not want to use up the time unnecessarily, but I did have some questions that I wanted to ask. And I don't want to be in any particular hurry about it.

The CHAIRMAN. I don't think we want to keep the Attorney General here too long. And you will have an opportunity to ask questions.

Mr. FORRESTER. As I say, I don't want to try to use up the time, but I do think that we should be allowed to ask questions here——

The CHAIRMAN. I say to the gentleman from Georgia that the Attorney General has appeared here and questions were propounded fully to the Attorney General at his appearance at the public session. His purpose in coming here was to give his views as to these bills. And I think that his stay should not be unduly prolonged. He was here yesterday. And I am quite sure that the gentleman from Georgia will be satisfied if he is given an opportunity to question later.

Mr. FORRESTER. I would like to say this, Mr. Chairman. The time yesterday was consumed by the gentleman from Colorado who is a member of a subcommittee and who has been hearing this testimony for 3 or 4 months.

The CHAIRMAN. Mr. Meader used some time, and some of the others used some time, so that it wasn't all consumed by the gentleman from Colorado.

Mr. MCCULLOCH. Will the gentleman yield?

Mr. FORRESTER. Yes, sir.

Mr. MCCULLOCH. I hope that the appearance of the Attorney General before the committee will not result in a psychological block that may have serious repercussions on civil rights legislation. I talked very briefly with the chairman yesterday, and as I understood it, the Attorney General was going to be available throughout the day. And I note without objection unanimous consent was secured by this committee to sit this afternoon. And busy as the Attorney

General is, and even in view of the fact that I am not immediately responsible for the conduct of this committee, I would urge that the Attorney General be available throughout the afternoon for members to question him as they see fit.

Mr. FORRESTER. Mr. Chairman, may I make this statement:

I think the Chair knows that I try not to be unreasonable. And I think the suggestion made by Mr. McCulloch is a very reasonable suggestion. Suppose we go ahead and operate today, and we will work with the chairman anyway we can, and we will try our best to limit the questions.

The CHAIRMAN. I have said in the beginning that I hoped that the presence of the Attorney General could be terminated, if possible. And if the Attorney General is willing to return this afternoon—and I will ask him that question now——

Attorney General KENNEDY. I will come any time the committee wishes to have me, Mr. Chairman.

Mr. MEADER. Mr. Chairman, a parliamentary inquiry. In the order of questioning are you going to alternate from one side to the other?

The CHAIRMAN. Yes.

Mr. CRAMER. Mr. Chairman, I have no desire to delay this legislation, but I think it is clear that the Attorney General did not discuss a number of the amendments added in the subcommittee. And as a matter of fact, there were some very substantial amendments added that were not discussed by the Attorney General at all that were very broad in scope. I have in mind one amendment that I have before me involving suits by the Attorney General relating to title IV, "desegregation of public education and other public facilities." The chairman is familiar with the amendment that was added which includes "any facility which is operated, managed, controlled, or supported, directly or indirectly, by any State or subdivision thereon," meaning, in our discussion in the subcommittee, that the chamber of commerce or even the united fund or anything else that a local community maintains would be subject to a suit by the Attorney General on the question of discrimination.

Now, I don't know whether the Attorney General wants to go that far or not.

The CHAIRMAN. Everybody will be given his opportunity, and Attorney General Kennedy has said he will come back.

Mr. CRAMER. I would like to finish my statement, Mr. Chairman. My statement to the Chair is that the Attorney General appeared before the Senate for 5 weeks, and he has appeared before this committee for 1 day. And I don't think it is asking too much to have the Attorney General appear before this committee for 1 day.

The CHAIRMAN. Mr. Willis.

Mr. WILLIS. Mr. Chairman, the time is practically upon us when we all have to make up our minds on this bill. I want to be perfectly candid, I am opposed to this bill. I will vote against it, or what is left of it if it is amended in this committee or on the floor. I will do so first on constitutional grounds, and secondly, because I think that utimately it would promote more discord than accord. I don't see how it is possible to promote the alleged freedom of some by destroying the freedom of others. I am not asking anybody to agree with me, I simply wanted to make that short statement as a preface to the very few questions I would like to direct to the Attorney General.

Mr. Attorney General, I heard you recite your statement yesterday, and I glanced over it this morning. And frankly, I have not given it the thought that it deserved. But there are a few things I would like to clarify in my own mind.

First, with reference to the voting provisions. As I understand the structure of the bill, upon an allegation by the Attorney General that less than 15 percent of the people of a certain race are not registered, that then the court, under procedure outlined in the bill, may go into the matter of qualification, or may appoint a referee, and that this initial petition by the Attorney General is the thing that sets the procedure in motion. Is that substantially the structure of it?

Attorney General KENNEDY. That is correct, Congressman Willis.

Mr. WILLIS. Now, I would like to ask a few questions. And I will be very frank. Can that allegation under a specific provision of the bill be challenged?

Attorney General KENNEDY. Excuse me, Congressman?

Mr. WILLIS. In other words, as I see it, the allegation seems to be self-proven. And I don't know of any provision in the bill permitting anyone to challenge a recitation of the fact that less than 15 percent are not registered.

Attorney General KENNEDY. There is no provision for challenging it, Congressman.

Mr. WILLIS. I am very glad to know that.

My only other question on that score is this: I frankly don't understand why this provision is in there. I expect one reason is probably because of your complaint that these lawsuits have been protracted and there has been long delay. I expect that is one reason.

Attorney General KENNEDY. That is correct, Congressman.

Mr. WILLIS. Is it the intention that this is a plan to increase registration?

Attorney General KENNEDY. I think basically it is the reason that you gave, the fact that it takes so long for litigation in some of these cases that, as I said yesterday, some of the cases that we brought in early 1961 are still perhaps a year or several years away from final determination. So that is a major factor.

Second, I think that we have found, the Civil Rights Commission has found, and the previous administration found, that there has been an effort in some areas of the country to prevent Negroes from voting on a large scale, a major effort. And that encompasses several hundred counties in part of the United States. And this is effort on a large scale to attempt to return the franchise to those who have been denied the most basic right under our system.

Mr. WILLIS. Now, thus far, if any information is correct, no Federal court in any of these lawsuits has actually appointed a referee.

Attorney General KENNEDY. That is correct.

Mr. WILLIS. And that has been done by the court itself, the job you are suggesting should be done?

Attorney General KENNEDY. It has been done in several instances by the court itself, instead of appointing a referee the judge has made himself the referee, and has done the registration himself.

Mr. WILLIS. Despite this, however, you think that the referee's provision should be retained and even broadened?

Attorney General KENNEDY. Well, just to assist the judge, the judge doesn't want to undertake that himself, and wants to make the investigation and the study, the purpose of this is to facilitate the responsibility of the judge. Now, the judge might do it himself or he might appoint a referee. That is the reasoning behind it.

Mr. WILLIS. Now, coming to Title VII, "Nondiscrimination in Federally Assisted Programs," page 42 of the committee print at line 22 it provides, section 701:

> Notwithstanding any inconsistent provision of any law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, be subject to discrimination under any program or activity receiving Federal assistance.

The first paragraph of section 702:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, loan, insurance guaranty, or otherwise, shall take action to effectuate the provisions of section 701 with respect to such program or activity.

Now, I think you are right in your statement that the public accommodations should be specified. Now, this provision worries me, and I only want to understand it. And this will be my last question on it. This to me is just as broad a provision as I have ever seen. And without any intent to put you on the spot, I ask you this question. As I read it, this would involve a complete possible shutout of Federal funds because there has been some discrimination somewhere, because of race, color, or national origin, in such fields as highway patrolmen, FDIC, Hill-Burton, college construction, health research programs, public housing—probably including Fannie Mae, no doubt—defense contracts, farm programs, old-age Federal contributions, State old-age pension assistance, unemployment insurance, the civil functions of the Corps of Engineers, school lunch programs—name them; they are all included.

Now, this is truly a broad provision. And I would welcome your comments if you care to give them.

Attorney General KENNEDY. Thank you, Congressman.

We have to go back to what the intent was. Undoubtedly it covers all of those programs that you have mentioned, Congressman.

It is also true that those programs in operation are being financed by all of our citizens, and they are being financed by the taxes of white citizens and Negro citizens as well. And it is our feeling and our judgment that if they are being financed by all of our citizens, if the taxpayer's money is being financed to support those programs, that it shouldn't be used just for the benefit of one group, that the Negro citizens or nonwhites should not be prevented from enjoying the benefits of the programs when their funds, their taxes, contribute to the support of them.

So that is the first point.

The second point is, it is for the future. It is not cutting off any aid or assistance or programs in the past. What happens if this provision is approved is that each one of these programs, governmental departments, agencies, or whatever it might be, will issue rules and regulations to prevent discrimination against nonwhites or against an individual based on his color or national origin.

Then it is up to those who are recipients of the programs or those who administer the programs to see that those rules and regulations are followed. If there is a finding that there is some discrimination in the administration of the program, I would hope—it is our intent that there will be an effort to work that out in an amicable way. If it ultimately results in, for instance, the cutting off of the program, the cutting off of assistance, that can be challenged through the courts by the recipients of the program.

So I think that there is protection. As you point out, it does cover all the governmental operations. But it covers them, because the finances that make those programs possible come from all the taxpayers, white and Negro alike.

Mr. WILLIS. I am not advocating discrimination in any of these programs.

Attorney General KENNEDY. I understand that.

Mr. WILLIS. But read the next sentence. That is what disturbs me. It says that:

> Such action may be taken by a pursuant to rule, regulation, or order of the general applicability and shall be consistent with the achievement or the objectives of the statute authorizing the financial assistance in connection with which the action is taken.

What I am now asking is, how do you go about cutting out these funds? I don't think that that is spelled out in the bill. It seems to me that that is an awful power to "each Federal department or agency" which is empowered to extend any of this particular financial assistance programs. Whether directly, indirectly, through grant, contract, loan, and so on. In other words, I don't think we would have the protective features or the specificity that you advocated in connection with the accommodations feature. And I just want to say that this disturbs me a great deal.

Attorney General KENNEDY. Could I just say, Congressman, it does encompass several hundred programs, there is no question about that, several hundred programs in addition to the ones you have mentioned. I would be glad, Congressman, to provide a list of these programs to you if you feel that that would be helpful.

Mr. WILLIS. Yes, I think that would be helpful.

Attorney General KENNEDY. But it encompasses every one of the Government operations in any of these fields. But I will provide that list to you and the members of the committee.

Basically what the rules and regulations will be is that the money utilized in these programs will not be used in a way that discriminates against any of our citizens because of their color or national origin.

Mr. WILLIS. I understand that. But in the meantime these programs—highway construction, and all the others, they are all important—would be stopped. And I think you might have an economic result which would not be consistent with what has been said to be the desire of this administration to provide jobs and get the economy moving.

The CHAIRMAN. I might say to the gentleman, we asked Budget to supply us with all these programs, and we received some of the items, but not all.

Mr. MCCULLOCH. Mr. Chairman, I would like to comment—

Mr. WILLIS. Now, this is not on my time.

Mr. McCULLOCH. I withdraw what I have said, Mr. Chairman.

Mr. WILLIS. I am sorry.

Mr. McCULLOCH. Go ahead; I was rude in interrupting.

Mr. WILLIS. I don't want to stall.

This thought occurrs to me, and I think it should be clarified. If there is a discrimination in one program, does it go to that one or the others? Does the bill say that?

Attorney General KENNEDY. I think it is understood from the bill, Congressman. That is specifically what we want to meet, just the one program. It is aimed at the particular situation, not aimed across the board. It also provides for judicial review in case the governmental agency has acted in a hasty or improper way. And basically it comes down, Congressman, when you talk about the road program it comes down to the fact that there isn't going to be a problem if those who are running against the road program are not discriminating against Negroes or somebody else's national origin.

So there is no reason to cut off the program; all those who are administering it, working on it, have to do is not discriminate. I don't think that that is really too much to ask.

Mr. WILLIS. Now coming to title III——

Mr. TUCK. Mr. Chairman, before we leave that subject, I would like to know whether or not a farmer residing in the south-side Virginia or Rhode Island or Louisiana would lose the benefits of the farm programs in which he has participated, if he and his Negro tenants decline to eat at the same table. Could that farmer do that and not be cut off from drawing benefits from the farm program?

Attorney General KENNEDY. Yes, he would; it doesn't cover employees.

Mr. WILLIS. To come back to title III, as I read your prepared statement——

Attorney General KENNEDY. I think that they didn't hear the answer. The answer is that the farmer doesn't have to eat with the Negro employee.

Mr. TUCK. He does not have to?

Attorney General KENNEDY. No.

Mr. TUCK. What would the farmer have to do?

Attorney General KENNEDY. He wouldn't have to do any of that; he wouldn't have to eat with the Negro employee if he didn't want to.

Mr. TUCK. If he did not eat with the Negroes or refused to allow his children to go to school with the Negroes would he be cut off?

Attorney General KENNEDY. No. That wouldn't have any effect on it.

Mr. TUCK. What activity if anything would he have to engage in so that he would not be able to participate in the program?

Attorney General KENNEDY. It would be those who administer the program who give assistance to the white farmers and not the Negro farmers; it wouldn't be the farmer himself, but the administrator at the State level who refused to assist Negro farmers who had the same qualifications as white farmers. But after that he could do whatever he wanted to.

Mr. WILLIS. I am glad to have suggested an area of discussion.

Mr. TUCK. I thank the gentleman from Louisiana.

I would like to announce to the committee that I oppose the bill. And I say this without any disrespect to the distinguished Attorney General and the other members of the committee. But I do want to say that I don't know that I could add anything to the sum total of the knowledge of this committee by asking questions. So I would like to take this opportunity to say that I appreciate the courtesy of the Attorney General to come in here and make himself available to this committee. And I share the view expressed by the distinguished chairman, that I think the fact that he came yesterday and made the statement he did make was substantial compliance with what I understood the object of the committee was in inviting him.

However, this is a most important matter, one that affects the people not only of the South but of every State in the Union. And I hope that there will not be any limit to the questions that we may ask. I have no desire to prolong the hearing. In fact, so far as I am concerned, I waive my opportunity to ask any other questions.

Mr. WILLIS. I have a few brief questions left. They have been made much easier by the statements of the chairman.

Mr. Chairman, I have procured a copy of the statement you made at the opening of the hearings, and I will quote the last sentence:

> The urgency for bipartisan legislation at this session is so strong that I intend to put aside my own feelings with respect to the desirability of provisions in addition to those recommended by the administration, and I shall exert every effort toward achieving a bill along the lines recommended by the administration to be reported out of this committee within 2 weeks.

To be consistent with your position, Mr. Attorney General, I notice in the opening on page 1 you say that "I am here today to support the legislation which the President committed." Now, on page 25 you state the same thought "I believe that if legislation modeled on the President's proposal is passed, it will go a long way," and so on. I have just these questions to ask. I know that you have made yourself clear in your statement as to all features of that.

Now, let me ask you this question, beyond the desire for legislation in this field. I take it that you are now recommending to the committee that title I be restricted to Federal elections?

Attorney General KENNEDY. Well, my feeling on that, Congressman, is, as I stated yesterday, that I think that it does what we need to have done by restricting it to Federal elections. There is a feeling by the subcommittee that it should encompass State elections as well. I don't think that that is necessary. But I wouldn't oppose it; we wouldn't oppose it if it were contained in the legislation. I think that is up to the committee to determine how that should be handled. I think that the statement that I have made yesterday is that what wee need and what we would like is legislation modeled after what the President recommended.

Now, that doesn't mean that what we are looking for is to have it reported out exactly as the President suggested. I am sure that it can be improved, and I think with consultation between Republicans and Democrats that it can be improved.

Mr. WILLIS. I understand your position.

Attorney General KENNEDY. But that is one of the areas, Federal and State elections, that I would expect would be discussed by those who are interested in having some legislation.

Mr. WILLIS. And I know that there will be discussions by the committee while you are here, and I know of course that you would accept provisions added to the bill. But taking all the factors involved, everything involved, you would recommend that that be done, that it be restricted to Federal elections? I am trying to be specific, I must confess.

Attorney General KENNEDY. If it is the feeling on the part of those who want to be associated with the legislation that it should be confined to Federal elections, I would be glad to suggest that it be confined to Federal elections. I just don't have the feeling of the members of the committee who are actually interested in obtaining legislation, Congressman. I am not trying to avoid it. I would be glad, if you could tell me now that there was a strong feeling by several members of the committee who would otherwise support the legislation, but have a real imagination or concern about the State elections being included; I would be glad to say I don't think State elections should be included.

I don't think it is necessary to the bill, Congressman. But I know that somebody thought it must be a good idea, I know it is constitutional, and I have no objection to it. But if it is going to impede the passage of the legislation basically, I would be glad to suggest that it be removed.

Mr. WILLIS. I know, this is your first experience with civil rights, and we have had it for a long time. Of course, I am opposed to it anyway. And I have announced my position as to what I will do. But taking everything into consideration, and all possibilities involved, and having omitted it from your bill, having said that you recommend that it be done, be restricted to Federal elections, you might on this and other provisions of the bill be making a contribution to the subject matter we are talking about.

Attorney General KENNEDY. I think I made my position quite clear, Congressman.

Mr. WILLIS. Would that be the same with reference to title III, because in all frankness, I think you made as strong an argument against title III as drafted here as I have ever heard made—would that be your position with respect to title III?

Attorney General KENNEDY. My position in reference to title III is that I am against it.

Mr. WILLIS. Finally, with reference to title VIII——

Attorney General KENNEDY. I think it is the difference, obviously, between a question of the whole of title III in comparison with whether you are going to include State elections in title I. As I say, I think that that could be decided and determined by the committee and those who are interested in legislation, Republicans and Democrats, as to what they think is best. I see no difficulty about it.

Mr. WILLIS. Well, to come to title VIII, the FEPC program, I have the same question to ask. And I read from page 23 of the statement, which is quite clear, nobody can mistake it. It says:

> Therefore, the administration will support a Fair Employment Practices Act as a part of the civil rights bill as reported out by this committee, or as an amendment to the bill upon the floor—

parenthetically, if germane—

> or as a separate legislation to be acted in this Congress following the passage of the omnibus bill.

That is a quotation from that part of your statement.

Somewhere else I think you mentioned the fact that another committee in Congress has reported out an FEPC bill which is before the Rules Committee.

Now, as a fact, if an FEPC bill were offered separately, it would not be before this committee, it is only before this committee now because it has been added to it. And if members of the subcommittee reported this bill—actually this committee has had no hearings on FEPC, except Congressman Roosevelt, I think it was, suggested it—but a real down to earth hearing has not been conducted. And if taken by itself to be conducted, it would not be before this committee. I understand your position, you want it in this bill, as an amendment to this bill, or as separate legislation.

I must ask you what is your preference.

Attorney General KENNEDY. I think, Congressman, again that question could be resolved by the members of this committee who were interested in obtaining the passage of some legislation in this field.

Mr. WILLIS. I must say that is not too satisfactory, Mr. Chairman. But I yield the floor, and if others will yield to me as I have yielded to the others, I would appreciate it.

The CHAIRMAN. Mr. McCulloch.

Mr. MCCULLOCH. I have no desire to take the time of the Attorney General.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I just wanted to say one thing——

The CHAIRMAN. I am sorry, Mr. Forrester.

Mr. FORRESTER. Mr. Chairman, I would like to say to the Attorney General that I appreciate the fact that he has answered these questions candidly. I am going to try to be candid, too, in these questions I ask.

Mr. Attorney General, whether right or wrong, I am distressed, and I am wondering if the State courts have been bypassed in this area of legislation which you suggest. Can you tell me whether that is true or not?

Attorney General KENNEDY. I am sorry, whether what has been bypassed?

Mr. FORRESTER. I want to know, have the State courts been bypassed in this area? In other words, is this entirely now a Federal matter dealing with civil rights going into court, and so forth?

Attorney General KENNEDY. No, I don't believe it is. I think it would be much better, Congressman, for the Federal Government to stay out of this also. And I think it is much better that this whole matter be left to the States and that the Federal Government not be involved in it.

Could I say what I think the problem is? I don't think that in some areas of the country that there is going to be any remedy by the local officials or by the State officials. I don't think, for instance, that a Negro who is a citizen of the United States as well as a citizen of the State of Mississippi—I think unless the Federal Government helps in some way, that he is going to remain a second-class citizen. He can't remedy the situation himself in the ordinary fashion, Congressman, which is by voting, by turning out those that oppose him or participating in an election, because he can't vote, he is restricted

as far as education is concerned, he is relegated to the position of a second-class citizen. And I think that it is true in Mississippi, it is true in some other parts of the United States.

So, therefore, I think that the State itself and the local area is not going to take the steps to remedy the situation. I think it is incumbent upon the Federal Government where they have the authority to take what action is necessary to deal with the particular problem.

Mr. FORRESTER. Let me ask you this. In your capacity as an Attorney General have you recommended to any of the complainants that they go into the State courts for redress? All the courts are the subject to the objection you have mentioned.

Attorney General KENNEDY. I don't think it is just a question of courts, Congressman, it is not just a question of courts. I suppose it is a question of—it is just basically a question of education. Now, 70 percent—again going back to Mississippi—70 percent of the Negro population in the State of Mississippi hasn't finished the sixth grade. There we have 25,000 registered and able to participate in the legislation, and 10 years ago there were only 5,000.

Mr. FORRESTER. Have you suggested that they go into court in any State?

Attorney General KENNEDY. I would say that we have suggested every time that we have become involved in any case ourselves that the matter be taken up with local officials to try to attempt to remedy it themselves. No. 2, we have always gone—we have never brought a civil rights suit since I have been Attorney General without going to the local officials first and asking them to take action to deal with the problem.

Mr. FORRESTER. Let me ask you this question. Down in my home State, the State of Georgia, we have laws providing for registration, and machinery for enforcing that law. Has the gentleman recommended that anyone use this machinery in obtaining their rights in my State?

Attorney General KENNEDY. What particular rights are you discussing?

Mr. FORRESTER. The right to vote.

Attorney General KENNEDY. Perhaps there are isolated cases, but the right to vote is recognized and upheld in the State of Georgia, I don't think that is a problem really in the State of Georgia.

Mr. FORRESTER. I am not speaking of that, I am asking you: Have you recommended that they try the State courts?

Attorney General KENNEDY. The answer to that, whenever we have had a problem in the State of Georgia, Congressman—there haven't been a large number—where we have had a problem we have always recommended that they take it to the State courts and State officials. And No. 2, wherever we have become involved directly ourselves we have always taken it to the State officials and the local officials. And we have had, I suppose, dozens and dozens of conversations with local officials in the State of Georgia in connection with Albany and in connection with other matters where there have been problems.

Mr. FORRESTER. So far as I know, none of these cases have been brought in the State courts in the State of Georgia. Do you know whether I am right about that?

Attorney General KENNEDY. I don't know, Congressman.

Mr. FORRESTER. Well, I think I am. We take great pride in our judiciary down there, and I am sure that the gentleman, who is acquainted in Georgia, knows that also. And I am just wondering why we do not have some of those cases in our State courts.

Attorney General KENNEDY. I would point out, Congressman, in all due respect, that it is a State court in the State of Georgia that is holding these people without bail in Americus, Ga., at the present time.

Mr. FORRESTER. I didn't intend to get into this, but I believe that this case was disposed of by habeas corpus, was it not?

Attorney General KENNEDY. I don't think so. No, it has not.

Mr. FORRESTER. Well, it was. And there was a decision of the court. And they have the right to appeal. Now, do you resent that?

Attorney General KENNEDY. No; not a bit.

Mr. FORRESTER. Well, have they appealed?

Attorney General KENNEDY. I don't know——

Mr. ROGERS. If the gentleman will yield——

Mr. FORRESTER. You had all day yesterday.

Have they appealed?

Mr. ROGERS. I wanted to say what I know about it.

Mr. FORRESTER. I know, you and I have talked about it several times.

I want to know, have they appealed?

Attorney General KENNEDY. The fact is, Congressman, I think they are being held at the present time without bail. I don't know the specific status of it, but they are now held without bail, and have for some specific time, and they are incarcerated. I think their remedies should be pursued, and I think that they should be pursued by their own attorney. I think that they have some remedies, and perhaps they haven't been pursued as diligently as they might have. But the fact is that they are being held by a court at the present time without bail in connection with this matter. That is the only point I was making. I am not saying that they don't have remedies, Congressman.

Mr. FORRESTER. I didn't intend to bring up any particular case, but the case is proceeding according to law, and I am sure the attorney General does not object to that.

Attorney General KENNEDY. No, I do not.

Mr. FORRESTER. And if they would take that case to the court of appeals or the Supreme Court of Georgia, I am sure you need have no apprehension that justice will be done.

Attorney General KENNEDY. I am sure that is what we have recommended and have stated to those who have contacted us.

Mr. FORRESTER. That is why I can't understand why you brought that up.

Let me ask you some other questions. And please understand, I am just trying to get some information. Would you tell me what title I on page 38 of the committee print, lines 14 through 19 means?

Attorney General KENNEDY. I am reading 14 through 19. Should I do that?

Mr. FORRESTER. All right, do that.

Attorney General KENNEDY. Is that all right?

Mr. FORRESTER. Yes, sir.

Attorney General KENNEDY. Are we talking about the same thing? I am talking about the committee print, page 38, title I, page 38, lines 14 through 19; is that right?

Mr. FORRESTER. That is right.

Attorney General KENNEDY. And the question is, what does that section mean?

Mr. FORRESTER. Yes.

Attorney General KENNEDY. It means that applicants for voting should be treated alike.

Mr. FORRESTER. I rather thought that. But let me ask you this question. Taking a hypothetical case, suppose 25 applicants went to the registrar, and that registrar asked the same question of each of those 25, and then the 26th comes up and other questions are propounded to him, does that mean that that would be a violation of this provision?

Attorney General KENNEDY. No, it does not.

Mr. FORRESTER. Then what does it mean?

Attorney General KENNEDY. Well, I think just as it says, it is the same standard, practice, and procedure. Now, I think that if they ask the first 25 a very easy question and ask the 26th person a difficult, long, involved question, then I think that they would be applying different standards.

Mr. FORRESTER. That was exactly what I was trying to get at. The statute provides that one qualification shall be that you must read one paragraph of the Constitution of the United States. Suppose the registrar pointed out to the first 25 a very simple paragraph, and they read that, and to the 26th he offers a paragraph that is hard or complex. Now, would that be a violation?

Attorney General KENNEDY. I think it is a reasonable requirement, Congressman, to read any paragraph in the Constitution of the United States, so long as they don't discriminate.

Mr. FORRESTER. I don't believe I understood you.

Attorney General KENNEDY. I think it is a reasonable requirement, to read any paragraph of the Constitution of the United States. But I think if you ask one person to read a paragraph in the Constitution of the United States and then somebody else to read a paragraph in Chinese, then I think that that wouldn't be fair.

Mr. FORRESTER. We don't know anything about Chinese down home, but I am trying to find out about this now, because there is a provision which you are acquainted with that you be able to read any paragraph in the Constitution of the United States. And I was wondering if because a registrar all of a sudden let one have an easier paragraph, and the mere fact that another registrar gave another one a more complex paragraph——

Attorney General KENNEDY. I don't think that that would be a problem.

Mr. FORRESTER. I am glad to hear it.

Attorney General KENNEDY. But I would like to point out, we have instance after instance where it was quite different from that.

Mr. FORRESTER. Do you believe that the Federal Government should require a literacy test?

Attorney General KENNEDY. No, I don't.

Mr. FORRESTER. You don't think that the Federal Government should make a law saying that a person that has gone through the sixth grade should be presumed to be qualified?

Attorney General KENNEDY. Yes, I do.

Mr. FORRESTER. What is the difference there?

Attorney General KENNEDY. I think it is up to the State to establish the qualifications, and I think that that is basic in our Constitution. But under the 14th amendment, also under other provisions of the Constitution, I think that the Federal Government can pass legislation dealing with the manner of testing. But I think that the test, the qualifications would be established by the State.

Mr. FORRESTER. Let me ask the Attorney General this—and I know that that is one line of thought. But if that can be done, doesn't it follow that the Federal Government could pass a law prohibiting the poll tax without a constitutional amendment?

Attorney General KENNEDY. Yes.

Mr. FORRESTER. And doesn't it also follow that the Federal Government could say that any person 18 years of age could be a qualified voter?

Attorney General KENNEDY. I don't believe so, Congressman.

Mr. FORRESTER. I believe you said that the amendments that you were discussing said that they could regulate the time and place and manner of holding the election.

Attorney General KENNEDY. That is correct. But I think each State decides the qualifications of its own voters.

Mr. FORRESTER. Let me ask you this. Could the Federal Government by law describe the residential qualifications of a voter?

Attorney General KENNEDY. I don't believe so.

Mr. FORRESTER. The reason I am asking these questions is that a former president of the American Bar Association said that those things could be done, and I was just trying to get your opinion.

Attorney General KENNEDY. No.

Mr. FORRESTER. I think you stated that in the law regulating Federal elections that that would be satisfactory. I never did find whether you actually recommended that or not. Would you tell me whether you did or not?

Attorney General KENNEDY. Yes; in the original legislation we recommended Federal legislation.

Mr. FORRESTER. Let me ask you this. What about next year, would you recommend the next year, or do you intend to recommend next year that this law cover State and local elections as was set out in this subcommittee report?

Attorney General KENNEDY. I think I covered that in my statement, and I think also in my answers to Congressman Willis. I think that if the Committee decides that they want to cover both Federal and State elections, that it will be satisfactory. In my judgment, based on what we found as a problem, we don't think that it is necessary. But if the committee decides that they would like to cover it, then it would certainly be acceptable to us. We think it is constitutional.

Mr. FORRESTER. Would you of your own initiative, or would the administration next year recommend legislation covering State elections, local elections, and so forth?

Attorney General KENNEDY. You mean if this legislation is passed dealing with Federal elections will we make a recommendation dealing with State elections next?

Mr. FORRESTER. Yes.

Attorney General KENNEDY. No.

Mr. FORRESTER. Thank you. I am glad to hear that.

Let me ask you this. Is the decision of Judge Bradley in the civil rights case, is that the law now?

Attorney General KENNEDY. Yes; it is.

Mr. FORRESTER. That is a civil rights case.

Attorney General KENNEDY. 1883.

Mr. FORRESTER. Is that the law of the land?

Attorney General KENNEDY. It is.

Mr. FORRESTER. Now I want to ask you, then, do you believe that the Supreme Court could change that law of the land by a 5-to-4 decision?

Attorney General KENNEDY. I think that they could overrule that decision of 1883.

Mr. FORRESTER. Can overrule the law of the land?

Attorney General KENNEDY. Can overrule that decision which overruled what is presently the law of the land.

Mr. FORRESTER. What I am trying to find out is, do you believe that they can overrule the law of the land, or is it necessary to have a constitutional amendment.

Attorney General KENNEDY, I think that the situation has changed considerably since 1883, Congressman. Reading Judge Bradley's decision, what has happened with the passage of the Jim Crow laws in the late 1880's, the 1890's, the beginning of the 20th century, I think that the situation is such that the Supreme Court could now decide that under the 14th amendment that regulations such as have been recommended could be constitutionally—could be declared constitutional.

Mr. FORRESTER. I was aware of the gentleman's thinking on that, but I just wanted to get that in the record.

Let me ask the gentleman about this. I want to say to the gentleman that I got some comfort out of the statement that you made on page 15——

Attorney General KENNEDY. Could I go on in my last answer, Congressman, to say that as far as the legislation that we have suggested and recommended under title II dealing with public accommodation is concerned, that this problem or this question of the civil rights case of 1883 is really not raised. Our legislation is based, rather than on the 14th amendment—it is based on the 14th amendment, but it is also based on the commerce clause to the Constitution, and therefore quite clearly constitutional.

Mr. FORRESTER. As I was saying, I get a measure of comfort out of some of the statements here on page 15 where you said:

> It would be a mistake to assume that all demonstrations are protected because their aims are consistent with national policy and are supported by the vast majority of the American people—like peaceful protests against racial discrimination. Limitations may be constitutionally imposed upon the time of demonstrations, their duration, their place, and the number of people.

Would you care to comment on that, enlarge on that, and tell me how some of these demonstrations could be held violative of the law?

Attorney General KENNEDY. What?

Mr. FORRESTER. Could be held violative of the law, not legal.

Attorney General KENNEDY. I think I spelled it out in my statement, Congressman, I think that whether it be in the North or South, that the policy issued in the past regulations and rules in connection with——

Mr. FORRESTER. Pardon me, I am not getting it.

Attorney General KENNEDY. I have trouble hearing you, too.

Mr. FORRESTER. All right, go ahead.

Attorney General KENNEDY. I think that it has been accepted and customary that the police can establish rules and regulations for the holding of demonstrations which will insure that they are orderly and which will insure that they are conducted in a way that does not cause bloodshed or violent upheavals.

Mr. FORRESTER. I am at least getting some comfort out of that. Because we have had movements by demonstrators something like the locust movement in Old Egypt, and I just wanted to find out what your view is.

Attorney General KENNEDY. Of course, there are a number of occasions, Congressman, where we have found that where there are demonstrations that appear to be perfectly proper, that those who participate in them are immediately arrested. And I give you such examples as children coming out of the church with American flags on Flag Day, we have had those kinds of instances, of two or three people walking along with a sign, and they are immediately arrested. So there have been obviously instances where those who are participating in reasonable protest under the first amendment have not been permitted to do so by local policies. This in turn has caused a good deal of the bitterness and hatred that has sprung up over the period of the last 4 or 5 months.

Mr. FORRESTER. Let me ask you this question——

Mr. GILBERT. Will the gentleman yield for a question?

Mr. FORRESTER. Yes.

Mr. GILBERT. Mr. Attorney General, assuming that the local police adopt very stringent regulations, and the purpose is to destroy any effective demonstrations, would the Federal Government have any right to intervene?

Attorney General KENNEDY. We do not.

Mr. GILBERT. You don't have?

Attorney General KENNEDY. We do not. The individual has some rights.

Mr. GILBERT. Don't you think, then, that there should be some language in title III to protect the rights of these demonstrators?

Attorney General KENNEDY. Well, I go back to what I said yesterday, Congressman, I think, first, why have the demonstrations taken place? The demonstrations have taken place to remedy some substantive injustices. In my judgment the best way to deal with it is for Congress to pass legislation which will remedy these injustices. The legislation that we have recommended and suggested and which I hope will be looked upon favorably by this committee and passed by Congress will do just that. So I think that is the first point.

The second point is I think that it is difficult for us up here to be making decisions as to where a demonstration should be permitted and where it should not be permitted. I agree that there have

been instances, quite a number of instances, where police have used this authority and power to crush reasonable protests under the first amendment. But on the other hand, it is difficult for us to know where a particular demonstration with a particularly large group of people, for instance, might in turn attract a counterdemonstration which would lead to violence.

Then we say to the local people—the practical problem, is, Congressman, if we say "We think you should allow that demonstration and that she should be permitted to march," and the local police say, "if you do that, you are going to have violence down here," and if we say, "we think they should be allowed to march anyway," and the local police say, "then we can't take the responsibility," then who is to take the responsibility? I have great sympathy with those kinds of demonstrations. I have examples of where little children were just marching along with an American flag and were arrested. But then you have the problem of dealing with the substantive evils.

Mr. GILBERT. Thank you.

Mr. FORRESTER. Mr. Attorney General, let me ask you this question. Is the right to demonstrate unlimited? In other words, suppose a group who were claiming that they had been mistreated were demonstrating in a city in the United States, and they keep that up day after day, week after week——

Attorney General KENNEDY. I don't think it is unlimited.

Mr. FORRESTER. You don't think what?

Attorney General KENNEDY. I don't think the right to demonstrate is unlimited.

Mr. FORRESTER. Let me ask you this. Where a person is permitted to demonstrate and their case has been made known to the authorities, isn't there a remedy to them in the courts?

Attorney General KENNEDY. I suppose it is a question of what they are demonstrating about, Congressman.

Mr. FORRESTER. No matter what it is, can they demonstrate day in and day out and week in and week out?

Attorney General KENNEDY. Well, if they are not achieving any remedies for the injustices, if they find that nobody will talk to them—as you know, Congressman, there are communities where white people, for instance, will refuse to sit down with Negroes and discuss injustices and discuss their problems, discus what is bothering the Negro community. Now, where that doesn't occur and where they have those kinds of problems, I can understand why they turn to demonstrations.

I don't know what else they can do under those circumstances.

Mr. FORRESTER. I didn't ask you about understanding, I can understand what a person may do too, but I am talking about the law. I was always taught that two wrongs never made a right.

Attorney General KENNEDY. What would you do if you were a Negro in one of these communities, Congressman, and you can't vote, you have difficulty obtaining employment, you can't go into any of the places that are generally open to the public, you can't hold any position within the local government, what would you do?

Mr. FORRESTER. I am going to tell you what I would do. I would get in touch with you by telephone and in a matter of a few minutes I would have you over the phone, and you would furnish me the finest

law organization in the entire United States to litigate my case completely free, and with the other party paying all the expenses incident to defending themselves and getting their own witnesses into court, and so forth. That is what I would do.

Attorney General KENNEDY. I take it that you would rather not have that occur. So what would you do at the local level as a Negro in one of these communities?

Mr. FORRESTER. What would I do?

Attorney General KENNEDY. Yes. I am sure you agree that there have been large numbers of Negroes who have been prevented from voting in an election because of the fact that they were Negroes. Would you agree with that?

Mr. FORRESTER. I agree that there has been some discrimination perhaps. You also have murder, you have crimes all the time. And I don't think you are going to stop them any time soon. And I don't think that because a person is complaining or has a complaint they should take it to the streets, I think they should go to the courts. And I wanted to find out whether you agreed with me on it.

Attorney General KENNEDY. I think they should go to the courts. But the effort should be made on the local level. And I think if the effort were generally made at the local level, Congressman, this legislation wouldn't be necessary, because I think you would make progress. I don't think this is going to be remedied overnight, and I don't think this is going to change all these things immediately. But I think if you at least give people a chance and start to make progress and look at what the problems are and try to deal with them, I think you are going to try to move ahead.

But if that is not done, then as you say, the only thing these people can do is to go to the Federal Government. And I think that is unfortunate, because I think they should go to the local people and attempt to obtain remedy.

Mr. FORRESTER. That observation reminds me of the man who said that his wife was the biggest spendthrift on earth.

And he asked, "What does she do with all that money"?

And he said, "I haven't given her any."

You haven't tried these State courts yet, have you?

Attorney General KENNEDY. I think they have been tried, Congressman.

Mr. FORRESTER. I believe the gentleman is well acquainted in my State, and I think the gentleman knows——

Attorney General KENNEDY. I think that Georgia has problems just as Massachusetts has problems. And Georgia, in my judgment, is trying to deal with these problems. Now, there are isolated cases, as there are isolated cases in Massachusett. I think Georgia is attempting to remedy it. But that is not true all over the country. And it is not true in every community in the State of Georgia.

Mr. FORRESTER. Frankly, Mr. Attorney General, we are in bad shape where I live, and down in Albany, Ga., not so long ago we had those demonstrations by some of those nonviolent boys. But those nonviolent bricks they threw put some of those residents and some of the policemen in the hospital. There is a bad situation down there.

And I have before me a newspaper statement where it says that Negroes had made 25 demands on the city government of Atlanta, and

if those demands were not met they were going to turn Atlanta upside down.

Attorney General KENNEDY. But if you bring up Albany, Ga., the white population that compose Albany, Ga., won't even talk to the Negroes in Albany, Ga. If you were a Negro in Albany, Ga., you would be protesting, Congressman; you wouldn't accept it, you couldn't accept it as a human being, the situation in Albany, Ga. Albany, Ga., not characteristic of the rest of Georgia, Congressman.

Mr. FORRESTER. I would say this, Mr. Attorney General, if I were a Negro, I might do that, but a white man can't do it, that is a right that the Negro has that a white man doesn't have, you wouldn't permit the white man to go down the street like that, would you?

Attorney General KENNEDY. Congressman, if I were treated by the white population as the Negro has been treated by the white population in the United States, and there weren't any remedies forthcoming, I would take to the streets. And that is why I can't understand your opposition to this legislation. You say they shouldn't demonstrate, and they shouldn't protest, and yet you won't support something that will remedy some of these problems. And that is what it comes down to basically.

Mr. FORRESTER. Since you have made that statement, I think I have sense enough to know that it will not remedy it. I don't think any remedy other than the persons having their legal rights adjudicated in court can remedy anything.

Attorney General KENNEDY. Have you suggested in Albany, Ga., that the whites sit down and talk with the Negroes?

Mr. FORRESTER. Oh, they have done it hundreds of times.

Attorney General KENNEDY. No.

Mr. FORRESTER. I don't live there. But I can tell you, they have done it a hundred times. Now, Mr. Attorney General, the very best people down in Albany will tell you that.

Attorney General KENNEDY. I have talked to a lot of people in Albany, I have talked to the officials down there, and you know as well as I know that a lot of them feel that this hasn't been properly handled.

Mr. FORRESTER. Well, I think that you and I talked to different people.

Attorney General KENNEDY. I don't see how we could have.

Mr. FORRESTER. That is all.

Mr. CORMAN. Will the gentleman yield for one question?

Mr. FORRESTER. Yes.

Mr. CORMAN. We talked a moment ago about the possibility that if this year we adopted legislation relating to Federal elections only, what might we do in a year or two or three.

Attorney General KENNEDY. No, he asked me if I were going to offer some legislation next year.

Mr. CORMAN. Yes. I would like to inquire, if we should pass this legislation which gives some remedies to people so that they can vote in Federal elections only, and in 2 or 3 years only we found that substantial numbers of people had been found by the Federal courts qualified to vote in Federal elections but were being denied the right to vote in local and State elections, would you agree that that might be a proper concern for the Congress?

Attorney General KENNEDY. Yes. The Congressman asked me about next year. I wouldn't think that by next year we would have had the time or opportunity to examine the effect of this legislation. We think the effect of this legislation would be that you could vote both Federal and local. We could be wrong about that. I don't think we would learn in a period of 12, but if we were wrong about it, I would have no hesitancy about coming back and asking for firm legislation.

The CHAIRMAN. Mr. Poff.

Mr. POFF. Mr. Chairman, for the purpose of clarification and orderly contribution, I will confine my questions to the confidential committee print. And for the purposes of the record, that print reflects the amendments which were added to the original bill in italics. And those amendments made by the subcommittee in striking the language of the original bill are indicated by a heavy black line.

Now, having said that, in order to clear up some misunderstanding I had yesterday, may I direct your attention first to the language beginning on line 30, page 6. Briefly, that language added to the original language by the subcommittee calls for the impounding of ballots pending a final determination of the question concerning a pattern or practice of discrimination. Now, Mr. Attorney General, is it your opinion that this amendment made by the subcommittee should not be included in the legislation which the full committee reports?

Attorney General KENNEDY. I feel very strongly about that.

Mr. POFF. That it should not be?

Attorney General KENNEDY. Correct.

Could I say, Congressman, we had quite an extensive discussion yesterday about this matter. I would like, if it meets the approval of the committee, to submit a written memorandum on this matter so that that could be asked by the committee.

Mr. POFF. That would be helpful.

Directing your attention to the language beginning on line 8 on page 16 and ending with line 15, first, that language and the language on page 17 constitutes the major substantive changes which the subcommittee made. May I ask you if it is your position now that this language should be omitted from the legislation reported by the full committee.

Attorney General KENNEDY. We would be in favor of omitting (iv) (i), and we would have no objection to retaining (iv) (ii), which follows, I think, the recommendations and suggestions of Senator Keating and Senator Javits.

Mr. POFF. Then if I understand it correctly the bill would read beginning on line 8:

> Any place or establishment providing accommodations, amusements, food, goods, or services to the public, if discrimination or segregation practices of such business are compelled, encouraged, or sanctioned by the State, directly or indirectly, in any manner whatsoever.

Is that correct?

Attorney General KENNEDY. That is correct.

Mr. POFF. May I inquire, if this committee reports the bill in that form, would the Attorney General be permitted to bring a lawsuit on

behalf of an aggrieved citizen pertaining to discrimination in some business that was licensed by the State or a locality in the State to do business.

Attorney General KENNEDY. Not necessarily, no. We would be able to bring a suit if the State had a law or the city had an ordinance that required that particular business to segregate.

Mr. POFF. I notice that you used the word "required." And, of course, that word would be consonant with the word "compelled" on line 13. But would that word be consonant with the word "sanctioned" on lines 13 and 14?

Attorney General KENNEDY. Well, I think that what we have in mind here is the discrimination or segregation practices which would be sanctioned—which ones have been "compelled," encouraged, or sanctioned by the State.

Mr. POFF. Of course, the word "practices" is in that language, referring to conduct on the part of the individual citizen, and the word "sanctioned" therefore modifies that language. And my question is, sir, if the State sanctioned discriminatory practices by a private businessman, would he then be subject to a suit by the Attorney General?

Attorney General KENNEDY. I don't think so. It would be something more, Congressman, than the State being neutral on this matter. They would have to take some overt action to bring about segregation in order for the Attorney General to become involved in a case.

Mr. POFF. Now, if it is a fact that the businessman has notoriously been discriminating in the past, and the State subsequently grants him a license, would that constitute a sanctioning of the discriminatory practices?

Attorney General KENNEDY. I do not believe so.

Mr. POFF. May I inquire if a private businessman consciously and deliberately discriminated among his customers, and by reason of the fact that some uninvited customer created a fracas he called the local sheriff or State police, and they evicted the trespassers, would that constitute sanctions by the State?

Attorney General KENNEDY. Not by itself, Congressman.

Mr. POFF. Now, may I direct your attention to the language beginning on line 4, page 17, and continuing through line 7. That language defines what has come to be known as the Mrs. Murphy's boardinghouse exception.

Attorney General KENNEDY. Congressman, it might be—could I just go back for a moment.

Mr. POFF. Yes.

Attorney General KENNEDY. It is possible that there could be some confusion about the word "sanction" along the lines that you have raised. It might be that the committee working with our people at the Department of Justice could think of a better word or make sure that that is clear.

Mr. POFF. Do you think that the word "encourage" might be subject to the same infirmity?

Attorney General KENNEDY. Could we work on that. I have explained to you what our intention is and what I think the intention of that section is and what the intention of those who originally offered this provision is. And perhaps we could work on it and make sure that the language fits that.

Mr. POFF. As a matter of fact, Mr. Attorney General, if you intend, as you suggested, to pitch this title on the interstate commerce clause rather than the equal protection clause of the 14th amendment, wouldn't it be necessary to eliminate all of subsection 4?

Attorney General KENNEDY. No; because I think it should be on both the commerce clause and the 14th amendment. And this covers specifically the 14th amendment. And I think it is quite clearly constitutional.

Mr. POFF. Did your statement not indicate that you felt that a 14th amendment basis raised certain questions?

Attorney General KENNEDY. Yes, sir; I think that that does if you include 4(iv)(i). Whereas, there is actually State action, however, Congressman, based on the Court's decisions, where there is actually State action which participates in the segregation, I think that it is quite clearly a violation of the 14th amendment. So that it therefore would be constitutional. Where the State action is limited to just a licensing, for instance, I don't think that that is sufficient. And, therefore, I think—my judgment is that it would probably be unconstitutional.

Mr. POFF. In that respect you disagree with Justice Douglas?

Attorney General KENNEDY. Let me just say that the rest of the Court hasn't gone as far as Justice Douglas. And this is the matter that is being considered by the Court really to some extent now, it is a question of whether they are going to make that kind of a decision or not in the cases that were argued yesterday. And we filed a brief in connection with those cases. And I would just as soon leave my testimony as it is at the present time.

Mr. POFF. Now, may I pass to the next question, and I will phrase it as briefly as possible. The language on lines 4 through 7, page 17, defines what is known as the Mrs. Murphy roominghouse exception; is that correct?

Attorney General KENNEDY. Yes.

Mr. POFF. Now, on what legal grounds and on what moral grounds do you justify this exception?

Attorney General KENNEDY. I don't justify it on any legal ground. I justify it on the basis, as I said before the subcommittee when I first appeared, that we are not attempting to become involved in social relationships. And frequently those who own small rooming houses and live on the premises themselves and just have a few rooms to rent, it becomes virtually a social operation. Maybe they are also making some money, but at least it almost by necessity required a social relationship. So we wanted to avoid that, of suggesting, recommending, approving legislation which would affect that kind of a relationship. And for that reason we except this and approve of this additional provision.

Mr. POFF. Do I understand, Mr. Attorney General, that if Mrs. Murphy has five rooms to let, then it is a social relationship, and if Mrs. Murphy has six rooms to let, it becomes a commercial arrangement?

Attorney General KENNEDY. I don't think that a cutoff line is ever completely satisfactory, Congressman. But it is a question of where you are going—we just didn't want to get down to a small establishment, we just didn't want the legislation to affect that. And finally,

after a good deal of discussion, we came up with five rooms. I don't think there is any magic in that particular number. And it is not completely satisfactory whenever you have a cutoff line. You have cutoff lines, of course, in a great deal of other legislation, and they are never completely satisfactory.

But I think the amounts of benefit, because of the purpose legislation, the amount of benefit that this accomplishes overcomes the difficulty it raises.

Mr. POFF. Now, this language applies to Mrs. Murphy's rooming-house. Should a similar exception be made to Mrs. Murphy's boarding-house, and should the line be drawn at 5 customers or 10 customers?

Attorney General KENNEDY. When you say boardinghouse——

Mr. POFF. I mean a place where people customarily go to eat.

Attorney General KENNEDY. I think it is much less of a factor. I don't think it would be necessary under those circumstances, Congressman.

Mr. POFF. In other words, you think that if it was a boardinghouse then there should be no exception even though it might constitute a social relationship?

Attorney General KENNEDY. Yes; I don't think it needs to be an exception.

Mr. POFF. Now, if you will turn to title III, it is my understanding that the Attorney General feels that the inclusion of this title is so broad in scope and so deep in its reach that it might constitute an unwise if not illegal delegation of power to the Attorney General.

Now, am I correct in assuming, however, that even if title III is omitted from the version reported by this committee, the essence of that title will remain in several other titles of the bill, and if so, do you feel that it should remain?

Attorney General KENNEDY. I don't know exactly what you refer to, Congressman.

Mr. POFF. I refer to the titles II, IV, and VII.

Attorney General KENNEDY. Well, it is limited in scope and limited to certain specific establishments. I think the objection to title III is that it is so all-encompassing. We know that it is encompassing, and it is difficult to tell where it ends. And I think that is the problem about it. As far as title II is concerned, it is aimed at particular establishments, particular types of businesses where the problem has existed, where we need some remedies for these difficulties. And, therefore, I would be in favor of title II.

Mr. POFF. Now, the concept of title III is written into title IV. And the subcommittee adopted an amendment which appears on page 28, beginning at line 9 and continuing through line 15, which would have the effect of broadening the application of the concept to include not only educational facilities but any facility "which is operated, managed, controlled, or supported, directly or indirectly, by any State or subdivision thereof."

First, do you approve that amendment made by the subcommittee?

Attorney General KENNEDY. I do, Congressman.

Mr. POFF. Now, will you indicate just what facilities you think might be embraced within that language?

Attorney General KENNEDY. Well, I think public parks, libraries, zoos, those kinds of facilities would be included.

Mr. POFF. You would not go so far as to include a chamber of commerce?

Attorney General KENNEDY. No; I would not. I think that the intent was to cover those kind of facilities, and with those kind of facilities I would approve this addition.

Mr. POFF. I believe in some States, Mr. Attorney General—and I may be in error about this—the chamber of commerce is supported by direct appropriations from public funds. If that be true, wouldn't the chamber of commerce fit within the definition of the words "supported, directly or indirectly by any State or subdivision thereof."

Attorney General KENNEDY. You mean assuming that they operate a building of some kind?

Mr. POFF. Yes.

The CHAIRMAN. Will the gentleman yield?

Mr. POFF. Yes, sir.

The CHAIRMAN. Would you call the chamber of commerce a facility, a public facility?

Mr. POFF. I believe the language is, "any facility supported by public funds," which could be Federal funds.

Mr. CRAMER. That is the point, this section is not limited to Federal funds. It means State and local funds may be available to support any facility which is managed, operated, or controlled directly or indirectly by that State or subdivision.

Attorney General KENNEDY. I think what it has in mind, and what we approved, is the State or local facilities which are covered by the 14th amendment. And I think it is quite clear that the chamber of commerce would not be covered. As I say, I think as examples it would be zoos or public parks, skating rinks. That is the intent, I believe, of the authors of this. That is why we would approve of this. We wouldn't approve of it if it covered the other kind of operations that it described, and I am sure we could work on language which would make it quite clear.

Mr. CRAMER. We have had a discussion on this—and I think I could correctly reflect that discussion—in the subcommittee as to what was intended to be covered. And I brought up the subject at that time of the chamber of commerce, of the United Givers Fund, of many other activities that are not governmental in nature, strictly speaking, that you intend to get at, or at least I thought were intended to be gotten at by this subsection, by this wording. If the local or State government leases property to this facility, then is it not directly or indirectly supporting that facility? I understand the objective, but I think it is clear on the language that it goes much further. And I think the discussion in the subcommittee was that it is intended to go further.

They intend to get to every type of facility with which the State or local community is connected—and Mr. Kastemeier is shaking his head "yes," and he is the author of the amendment.

Mr. KASTENMEIER. If the gentleman will yield, for the record, I am not the author of that amendment.

Mr. MEADER. The Justice Department is the author of the amendment; isn't that true?

Mr. KASTENMEIER. I think that is true.

Mr. POFF. May I recapture the floor, Mr. Chairman?

Attorney General KENNEDY. We are not the author of the amendment as it has been described by Congressman Cramer.

The CHAIRMAN. Go ahead.

Attorney General KENNEDY. But what we approve of—when I say that we approve of it, we support where it is limited to those facilities that are commonly covered or assumed to be covered by the 14th amendment, which includes the public parks, zoos, and those kinds of operations.

Mr. POFF. Now, I am a little unclear about the precise position of the Department of Justice with reference to the so-called withholding of funds section which appears in title VII on page 42. Do I understand correctly that the Attorney General favors the language drafted by the subcommittee in preference to the language of the original version?

Attorney General KENNEDY. That is correct.

Is this the language that we offered as the amendment ourselves? Or is this a substitution?

This is the language that the Department of Justice offered as a substitution some months ago.

Mr. BROOKS. If I recall, if the gentleman will yield, I believe it is language that was authorized by your office. Mr. Katzenbach delivered it down, and we looked over it and discussed it at long length. And there was some feeling that the original language was perhaps more temperate than that which he brought back.

Mr. WILLIS. Will the gentleman yield?

Mr. POFF. Yes, I yield.

Mr. WILLIS. Would someone tell me the difference between the two proposals struck out? I am not a member of the subcommittee.

Attorney General KENNEDY. Maybe I could summarize it. I think that the two—I am not sure that I agree with the characterization of Congressman Brooks. I think that this is better for a number of reasons. The first original suggestion that we sent up cut off aid after the fact. This provision provides for rules and regulations to be issued first by the particular agency. So that the recipient of the aid and assistance will know specifically and particularly what rules and regulations they have to follow. That is the first correction, improvement, in my judgment, that was made.

The second is the fact that there is judicial review, which we didn't provide for in the original measure that was sent up, that if an individual was receiving aid and then it is cut off or terminated in some fashion, or some other action is taken, because it is not confined to just terminating aid—and we would hope that that would be used only as a last resort—that if some action is taken by the governmental agency, that this provision provides for the recipient of the aid to go to court to have it reviewed judicially.

That is why, Congressman Brooks, that I think it is a better provision and a fairer provision than the original that we sent out.

Mr. WILLIS. And the rules would be put in the Federal Register in the usual way?

Attorney General KENNEDY. That is correct.

Mr. POFF. I have only two more questions.

First—I say this respectfully, Mr. Attorney General—I don't believe you have been quite responsive to the question which has here-

tofore been asked with reference to title VIII, the equal employment opportunity section. The Attorney General has had a wealth of experience in the Halls of Congress, and I think it would be not only interesting but helpful to this committee if you could recommend whether you think this title should be incorporated in this bill, or should be treated separately by another committee of the House of Representatives.

Attorney General KENNEDY. I think that, Congressman, if we could obtain the necessary votes of both Republicans and Democrats, to make sure that we get a rule on such legislation, and that we could get the necessary votes to have the legislation passed, I would be in favor of including it in this legislation.

Now, you say I am not sufficiently responsive, and Congressman Willis wasn't completely satisfied either. If after a period of time we could find out who is going to support this legislation, and have conversation and discussions in perhaps a more difficult atmosphere than we are in at the present time, and find out, for instance, if some Congressmen think that they support it if this was taken out but they couldn't support it if it were included, and it would appear that we wouldn't therefore get the necessary votes to get it by, I would be in favor of taking it out so that we wouldn't jeopardize the whole legislation.

But I will be as frank as I can. I can't tell you as I look around this room, Congressman, or even tell you what we are going to do in the Rules Committee. We are going to need, as I said, bipartisan support. And I would be glad to take the responsibility of taking it out at the appropriate time, and I would be glad to come down here, and if I thought that it was felt by those who are actually interested in obtaining the passage of the bill that it should be taken out, I would be glad to suggest at that time that it be taken out. But I am not going to suggest that it be taken out at the present time, because I would like to have it passed, and I think the possible chance of its passage is to have it included. And if we can get it by, if we can get the necessary votes including it, I am in favor of—my first priority, my first interest, is to have it included. That is what I would like to see. But I don't want to jeopardize the bill and the legislation by including it if it is going to mean that we are going to lose maybe a dozen votes that we need to get the legislation by.

Now I think that that would have to be discussed and discussed frankly and honestly by those who are in favor of the legislation.

There are members of this committee who are against the legislation entirely. But for those who are in favor of the legislation and want to work this out and come up with a bipartisan bill, I would be glad to come down, if they find that it is the consensus of those who look at it reasonably, I would be glad to come back here and suggest that it be taken out. So it is not anybody's responsibility. I am not trying to avoid the responsibility, I would be glad to come back and do that myself. But I think it is premature at the present time.

Mr. POFF. This is my final question, and I don't want you to consider it facetious. It has to do with the last title in the bill, title XI. Nowhere in the hearing have I been able to discover any evidence attempting to estimate what the cost of this legislation would be. Title XI is an open end authorization. Can the Attorney General help the

committee by making some rough estimate—and I realize it must be a rough and imprecise estimate—of what we might expect? This is on page 77.

Attorney General KENNEDY. Is this in this bill or the bill we have sent out?

Mr. POFF. The confidential committee print.

Mr. WILLIS. Page what?

Mr. POFF. Page 77.

Attorney General KENNEDY. You mean including title III?

Mr. POFF. If you can do so, I would be glad to have it in the alternative.

Attorney General KENNEDY. If we don't include title III, and we put title II back basically to what was originally suggested, the estimate that has been made, Congressman—and without FEPC, so I will have to send you a letter to add FEPC on and find out what that would be. But it is going to require maybe 40 more lawyers in the Civil Rights Division.

Mr. POFF. You haven't given me the estimate.

Attorney General KENNEDY. It is about $1,500,000, our estimate is. And I think that is the sum I used when I first appeared here.

Mr. POFF. And if all those provisions are included, do you have an estimate of that, if those provisions which you accepted in your estimate were included can you give us an estimate?

Attorney General KENNEDY. No; I couldn't. But I would think that there would be considerably more—even when I talk about considerably more, I mean certainly far more than twice as much, because I think that we just have a tremendous amount of litigation.

Mr. POFF. Does your estimate include the cost of the Civil Rights Commission?

Attorney General KENNEDY. No; it does not. We are talking about additional costs.

Mr. POFF. Of course, the Civil Rights Commission would be made permanent, and that is the reason I think it is important to articulate the question of whether it is included in your estimates.

Attorney General KENNEDY. We have suggested in our original bill that it be extended for 4 years rather than be made permanent.

Mr. POFF. I yield to Mr. Meader.

Attorney General KENNEDY. I might say, Congressman, so as to be completely clear, it doesn't include title IX, which is the taking of the census. I don't know how much that would cost.

The CHAIRMAN. Have you finished?

Mr. MEADER. The gentleman yielded to me on this point of cost.

I believe when the Attorney General testified in our public hearings—and I have a note here that it is on page 1396—he estimated that the Department of Justice would have to hire 40 or 50 more lawyers at an additional cost of $1,500,000. And that testimony was given before title III was added, before title IV was broadened to include public facilities as well as education, and before title VII on withholding was amended to provide for the injunctive proceedings for enforcement of nondiscrimination, and before FEPC was added. So I would assume that if we were to be able to answer questions on what this bill would cost raised during debate on the floor of the House, that we should have in our records somewhere figures of the additional costs

beyond the million and a half testified to by the Attorney General. We should have some evidence as to how much these other additional provisions—some suggested by the Justice Department and some proceeding from a source I know not where—would increase the cost of this legislation.

Attorney General KENNEDY. I would be glad to write a letter with an estimate, the best estimate we can come up with, Mr. Congressman.

Mr. POFF. Mr. Chairman, this is my last question.

Your original version recommended that the Civil Rights Commission be extended for 4 years, and the subcommittee version makes it permanent. Do you approve the change made by the subcommittee?

Attorney General KENNEDY. I am in favor of it being extended. If the committee wants it extended permanently, that would be acceptable. It is my feeling that in an area such as this that for Congress to have an opportunity to examine a mission which is aimed at a particular problem periodically is helpful. I think that there might be some major changes made in the country in the next 4 years, and perhaps you might want to change the whole charter of the Civil Rights Commission, its direction or its purpose. And it would be my feeling that Congress might want to look at those matters instead of making it forever.

I would hope also if this legislation is passed that we are going to move out of this morass and make some progress 4 years from now. And it is my feeling that Congress would like to look at those matters and not just make it a permanent institution. But if Congress decides they want to make it permanent, we would accept that.

Mr. POFF. I thank you, sir. And I yield the floor.

The CHAIRMAN. The gentleman from Massachusetts yields to the gentleman from Texas, Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I just want to make these observations. I think the Attorney General has made a very forthright statement. It took some courage to come down here and face the problem and say that he is going to support the legislation which the President has sent down here and say generally that he did not enforce every recommendation that has been made by the people who are for civil rights, as he is, and many of us are. I think it took some courage, and I think he is to be commended for it. I am glad he came down and said this, I think it is going to help.

There is going to have to be a bipartisanship. I think it is realistic to say that we need Republican votes. And I think it has helped to clear the air and make it possible for this committee to move on.

And furthermore I think you, Mr. Celler, our chairman, made a fine statement. It took some courage on your part to say that you intend to put aside your own feelings as to the desirability of some of these provisions and work for a bipartisan bill to get sufficient support to meet what appears to be a real challenge in this Nation.

And I would just add one thing. Nobody denies that we have a problem. And I think nobody contends that legislation alone will solve it. It is going to take more than legislation. And I think that both of these statements in the committee have been indicative of what we need to do. And I think our job, and my own job, as I see it, is trying to write a bill which will be workable, which will have only that which is necessary for the Federal Government to do in the legislation.

Attorney General KENNEDY. Thank you, Congressman.

The CHAIRMAN. Mr. Cramer.

Mr. CRAMER. Mr. Chairman, I have a series of questions. I don't intend to take too much time, particularly under the limitations that the Chair has set, which I think are wholly unrealistic. But does the Chair wish to consider the bill further now, or come back this afternoon for further consideration?

The CHAIRMAN. Whatever the gentlemen say.

Attorney General KENNEDY. I would just as soon stay for awhile.

The CHAIRMAN. Suppose we continue for 15 or 20 minutes, then.

Mr. CRAMER. That does not mean that I am limited to the questions I ask?

Attorney General KENNEDY. I will do whatever the committee wants, I will stay as long as they want, or come back whenever they want.

Mr. BROOKS. I have some commitments for lunch.

Mr. CAHILL. May I be recognized out of turn for just a moment?

The CHAIRMAN. Yes.

Mr. CAHILL. I merely want to make the statement that I have no questions to ask the Attorney General, but I would like, as Mr. Brooks did, to make a very brief statement, and that is I think the Attorney General has made his views crystal clear. And I want to go on record as saying that I agree with him as to the need for this legislation.

And I would further add that I think that even those who disagree with you—and I am not one of those—but those who would disagree with you, I think that they must appreciate your complete candor.

Attorney General KENNEDY. Thank you; I appreciate that.

The CHAIRMAN. We will adjourn until 2 o'clock.

(Whereupon, at 12:20 p.m., the committee adjourned, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

The Chair recognizes the gentleman from Florida, Mr. Cramer.

Mr. CRAMER. I was saying, Mr. Chairman, that having considered this matter for 9 months now I would like to have the committee know what is in the bill. That is going to be the import of my questions.

Mr. WHITENER. Off the record.

(Discussion off the record.)

Mr. TUCK. Mr. Chairman, in the interest of brevity and to preserve the record I suppose when the gentleman from Florida finishes his examination of the Attorney General that you will recognize me as the next ranking member of the committee?

The CHAIRMAN. That is correct.

Mr. TUCK. I would like to say I appreciate that very much indeed. There are a great many questions that I should ask but this whole procedure is so contrary to my philosophy of government that I doubt I could add much to it. The distinguished Attorney General is so dexterous and skillful in the management of his thoughts and in expressing them I would yield when my time comes to my distinguished colleagues who are junior to me with the understanding that if any time is left after they are through and you go around the table I might then have the opportunity to ask questions.

The CHAIRMAN. Mr. Cramer.

Mr. TUCK. In other words, I have no real weight with this gentleman.

Mr. ASHMORE. I hope the gentleman from Virginia doesn't infer that I do.

Attorney General KENNEDY. Could I say, Congressman, it is mutual. [Laughter.]

Mr. CRAMER. Mr. Chairman, Mr. Attorney General, I will make my questions as brief and as to the point as possible. I would like to say at the outset that it has been my objective in the subcommittee and otherwise to attempt to help in drafting a bill that I felt might accomplish the objectives sought whether I agreed with the objectives or not in a given instance. I believe the bill is better in some respects than the way it had been initially drafted. I also believe the record would show, if there were a record, that about as many amendments which I offered were adopted as any others suggested in the form of clarification or otherwise. So I have throughout the proceedings acted in good faith in an effort to get a bill, should it become law, that will do as little violence as possible to other concepts in addition to civil rights concepts.

So, with that as a preface, Mr. Attorney General, I have a few questions that I would like to ask with regard to title I.

Attorney General KENNEDY. Are we looking at the confidential committee print?

Mr. CRAMER. Yes, beginning on page 3, title I, voting rights.

It has been suggested that no referees have been appointed in the 30 or more voting cases that have been litigated.

Could the Attorney General indicate why that is?

Attorney General KENNEDY. Well, in the cases that arose, Congressman, where it was felt that possibly referees might be appointed, the judges themselves decided that they would act in the role of referees. Now, why they reached that conclusion, I could not tell you. They felt that that would be a better way of handling it than appointing a referee. They acted themselves in the position of referee.

Mr. CRAMER. The reason I ask the question was that despite the fact that the bill has been on the lawbooks for some time the referee provision has not been used. Is there any reason to believe that the temporary voting referee provision would be used by the court under that experience?

Attorney General KENNEDY. Well, Congressman, I think that it is very possible that this legislation—if this legislation is passed, and with some 200 counties involved at the present time where less than 15 percent of the Negroes are registered to vote that the judges in those areas might feel that the appointment of referees could be helpful and make it easier for them in the administration of the law, in the execution of the law.

No. 2, I think even in the past that the mere fact that referees, that the judge was considering the appointment of referees, has brought about the registrars taking action themselves to permit Negroes to register and to vote. So I think that it would be helpful if we could retain that in the legislation.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes, I yield to the chairman.

The CHAIRMAN. I have a record of the status of voting referees and I think it would be a good idea to put them in the record at this point. This was supplied by the Attorney General's Office. It gives you a record of every case where applications are made under the 1960 act and indicates considerable delays in these proceedings so I will put that status in the record at this point.

(The document referred to follows:)

STATUS OF VOTING REFEREES

Under the provisions of the Civil Rights Act of 1960 (42 U.S.C. 1971(e)) a voting referee may be appointed only after the Department of Justice has asked for a finding of a pattern or practice of racial discrimination. If the court finds such a pattern or practice, any resident in the affected area who is a member of the race discriminated against is entitled to a court order declaring him qualified to vote if he shows that (1) he is qualified to vote under State law and (2) he has, since the finding was made that the pattern or practice exists, been (*a*) deprived or denied under color of law of the opportunity to register or otherwise qualify to vote or (*b*) found not qualified to vote by any person acting under color of law. The judge himself may make the necessary finding of facts or appoint a voting referee to hear the allegations and to receive applications for an order and report his findings to the court. In each of the following cases, the Department of Justice has asked for a finding that a pattern or practice of racial discrimination exists in the registration for voting process. However no voting referee has yet been appointed.

Name and county	*Status*
1. *U.S.* v. *Raines* (Terrell County, Ga.)	The court found discrimination but refused to make a finding of a pattern and practice.
2. *U.S.* v. *Alabama* (Macon County, Ala.).	The court found a pattern and practice but no Negroes have applied under 1971(e) because the board of registrars has been substantially complying with the decree.
3. *U.S.* v. *Association of Citizens Council* (Bienville Parish, La.).	The court found a pattern and practice but no Negroes have applied under 1971(e), although their efforts to register locally have not met with much success.
4. *U.S.* v. *Alabama* (Bullock County, Ala.).	The court found a pattern and practice. No Negroes have applied under 1971(e) because the board of registrars has been substantially complying with the court's decree.
5. *U.S.* v. *Atkins* (Dallas County, Ala.).	The court found discrimination prior to June of 1961, but denied our request for a finding of a pattern or practice of discrimination by the registrars in office since June of 1961. The case is appealed but has not been decided.
6. *U.S.* v. *Manning* (East Carroll Parish, La.).	The court found a pattern and practice. Ninety-five Negroes have applied to the court under the provisions of 1971(e). Without appointing a referee the court has issued 43 certificates of qualification.

Name and county	*Status*
7. *U.S.* v. *Ramsey* (Clarke County, Miss.).	The court found discrimination but refused to find a pattern or practice.
8. *U.S.* v. *Lynd* (Forrest County, Miss.).	On appeal from the denial of a preliminary injunction, the court of appeals found discrimination and issued an injunction pending appeal. No pattern or practice has been found.
9. *U.S.* v. *Lucky* (*Ouachita Parish*, La.).	The suit has not yet been tried.
10. *U.S.* v. *Daniel* (Jefferson Davis County, Miss.).	After trial on the merits, the court declined to find a pattern or practice, but issued an interlocutory order relating to registration procedures.
11. *U.S.* v. *Wood* (Walthall County, Miss.).	The case has been tried but not decided.
12. *U.S.* v. *Penton* (Montgomery County, Ala.).	The court found a pattern or practice. No Negroes have applied under 1971(e). The Government has moved for the appointment of voting referees. The hearing on the motion was continued to September.
13. *U.S.* v. *Fox* (Plaquemines Parish, La.).	The court found discrimination but refused to find a pattern or practice. This has been appealed.
14. *U.S.* v. *Duke* (Panola County, Miss.).	The court found there was no discrimination. This has been appealed.
15. *U.S.* v. *Ward* (Madison Parish, La.).	This case has been tried but not yet decided.
16. *U.S.* v. *Dogan* (Tallahatchie County, Miss.).	The district court denied a preliminary injunction against the sheriff who refused to permit Negroes to pay poll taxes. The court of appeals reversed and also stated that evidence prior to the incumbency of the present sheriff would be admissible for a finding of a pattern or practice. The case against the registrar has not yet been tried.
17. *U.S.* v. *Louisiana* (State-wide challenge of the interpretation test).	The case has been tried but not yet decided. A finding of a pattern and practice in all parishes that use the interpretation test has been requested.
18. *U.S.* v. *Wilder* (Jackson Parish, La.).	Case tried but not yet decided.
19. *U.S.* v. *Green* (George County, Miss.).	On motion for temporary restraining order, discrimination was found. Trial on the merits has not been heard and there has been no finding on a pattern or practice.
20. *U.S.* v. *Ford* (Choctaw County, Ala.).	This case has been tried but not yet decided.

Name and county	*Status*
21. *U.S.* v. *Mayton* (Perry County, Ala.)	The court found acts and practices of discrimination. 174 Negroes applied under provisions of 1971(e). The Government appealed before the expiration of the 10-day period and the Government filed a petition for mandamus because the district court did not act upon the 174 applications. Mandamus was denied. The district court then ordered the board of registrars to process applications from the 174 Negroes. 117 of these were rejected and 40 were accepted, 17 did not apply. Subsequently, 142 Negroes, including 77 of the 117 who were rejected, applied to the court for registration under 1971(e). The court refused to consider these 142 letters as applications but did order the board to forward to the court the application forms and other materials concerning the 77 applicants who were among the 174 who previously applied under 1971(e).
22. *U.S.* v. *Mississippi* (statewide challenge of the voter registration laws).	The case has not yet been tried.
23. *U.S.* v. *Campbell* (Sunflower County, Miss.).	Case not yet tried.
24. *U.S.* v. *Clement* (Webster Parish, La.).	Case tried but not yet decided.
25. *U.S.* v. *Crawford* (Red River Parish, La.).	Case tried but not yet decided.
26. *U.S.* v. *Bellsnyder* (Jefferson County, Ala.).	Complaint filed July 31, 1963.
27. *U.S.* v. *Logue* (Wilcox County, Ala.)	Complaint filed July 19, 1963.
28. *U.S.* v. *Alton* (Elmore County, Ala.)	Complaint filed July 19, 1963.
29. *U.S.* v. *Ashford* (Hinds County, Miss.).	Complaint filed July 13, 1963. Preliminary injunction denied.

Mr. CRAMER. The record will speak for itself, no referees were ever appointed in those instances; right?

The CHAIRMAN. Yes.

Mr. CRAMER. Well——

Mr. DONOHUE. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. DONOHUE. Tell me, Mr. Attorney General, who under the 1960 act had the authority to appoint referees?

Attorney General KENNEDY. The judge.

Mr. DONOHUE. The district court judge?

Attorney General KENNEDY. Yes; that is correct.

Mr. DONOHUE. Well, will it make any difference now that a panel will be made up of referees by the judicial council, in your opinion? It is on page 8, starting with line 12.

Attorney General KENNEDY. Well, here we have in "appointing a temporary voting referee the court shall make its selection from a panel provided by the judicial council of the circuit."

What we have found is there have been delays in the past, potential delays, in finding somebody who will act as a referee in some of these more difficult areas. If there is a panel already drawn up we feel that would facilitate the matter.

Mr. DONOHUE. Do you think this will be an improvement over what has been done in the past?

Attorney General KENNEDY. Yes; we do.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. I yield to the chairman.

The CHAIRMAN. Mr. Attorney General, does not the difficulty stem from the fact that before a referee can be appointed there must be established by the court, a finding made by the court that is actually a plan or practice of discrimination, and that has taken a length of time in most cases?

Attorney General KENNEDY. Yes, that is correct.

Mr. CRAMER. The question of impounding votes was discussed at length yesterday. I will keep my questions as brief as possible concerning it.

Impounding is available to the court as a remedy in the present law, is it not?

Attorney General KENNEDY. It is if the registration takes place within the 20-day period. We would have no objection to the inclusion of that, Congressman, as I said yesterday.

Mr. CRAMER. Under present law are the votes counted or not counted?

Attorney General KENNEDY. They are counted, other than in the 20-day period.

Mr. CRAMER. What is done within the 20-day period?

Attorney General KENNEDY. They are impounded in the 20-day period.

Mr. CRAMER. They are not counted?

Attorney General KENNEDY. They are not.

Mr. CRAMER. Under this proposal, votes would be impounded and a person would be elected to office and serve during the period of the voter descrimination litigation. Thereafter, if a pattern or practice is determined to exist the impounded votes are later counted and results of the location would be changed. Mr. X elected, without the impounded votes, would become unelected with the impounded votes, even though he may have served for a substantial period of time.

Is that not the result?

Attorney General KENNEDY. I think it is just a question of balancing the equities here, Congressman. If somebody applies to register, attempts to register, and it is just 20 days before the election, it is a question whether the referee or the judge can adequately hear the case and decide the matter properly, whether it can be contested. Under our provision it can be contested by the State or local official and whether it can probably be contested, so in the past under the 1960 act within 20 days, they apply within 20 days, the reasoning behind it was it was so close to the election it could be impounded. I have no objection to that.

Obviously it can change the result of the election. I would object to the fact, not married to the particular time of 20 days, if it is be-

yond that period of time it should be counted in the election, once the judge has decided that a particular individual is qualified to vote.

Mr. CRAMER. What difference does it make if it is 20 days under the present law or more under the proposed legislation when the result is the same. The hypothetical which I pose is not a far-fetched proposal from the experience I have gained from serving on the Select Committee on Campaign Expenditures which judges congressional elections. In an election in Indiana, for example, the victor ended up with a two-vote advantage. So I have been involved in many elections where a few votes could make the difference. Assuming that a number of votes were impounded, and this litigation as you say goes on for an inordinate period of time, Mr. X elected without the impounded votes sits during that period, does he not?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. But then when the pattern or practice is found to exist those impounded votes are then cast under this amendment and under the present law.

And the party that has served during the entire period of litigation, including appeals, would be out of office. He was never duly elected in the first place and everything he did would be illegal. Would that not be the result?

Attorney General KENNEDY. That is why I would not favor impounding it, Congressman; I go back to what the problem is. The problem is that litigation that takes place, the investigations and studies that take place at the present time have taken such a long period of time that election after election goes by and people are not permitted to vote in those elections so they lose that opportunity and that right and those basic rights forever.

What we are trying to do is do something about that.

Mr. CRAMER. I understand that.

Attorney General KENNEDY. Could I just explain.

Then the idea that we have is that in these areas where less than 15 percent of the Negroes are registered, that in those areas where a Negro then comes in, makes an effort to register with the local official and cannot register, although he feels that he is qualified, can then go to a Federal judge and the Federal judge will then pass on whether he meets the qualifications established by the State, and if he meets the qualifications established by the State that he can then vote in the next election.

Now, that is what we are trying to accomplish. Then we come in and say, well, as it was argued before, the purpose of this is to permit as many people who are qualified to vote to vote in elections and participate. You can come in then and say, well, the judge, if a person comes in just the day before the election, for instance, or 5 days before the election, or even up to 20 days before the election and attempts to register that it is not giving adequate time for the judge to consider the case and also adequate time for the State or the local officials to come in and argue against his being permitted to vote in the election. So if you are not giving people adequate time in balancing that equity off you would impound that vote during that period of time.

Now, if there is a strong feeling against impounding it for that 20-day period perhaps we would say if they did not come in prior to 20

days before the election that he could not vote at all in the election. I am against impounding it generally because I think it raises that kind of a problem. But I think also we should consider the fact that somebody might vote that perhaps should not vote, there are hundreds of thousands of people at the present time who cannot vote although they should be permitted to vote. So we are balancing all of these things off and trying to come up with the best possible solution.

This would be a major step forward in our judgment in permitting people to vote in elections during the period of time of the litigation.

Mr. WILLIS. Will the gentleman yield for a question?

Mr. CRAMER. Yes, I will yield to the gentleman.

Mr. WILLIS. Mr. Attorney General, this point occurs to me: Suppose under State law in a situation of this kind involving qualification of a voter you have certain challenging proceedings and impounding proceedings pending the final determination of the issues if, as I imagine would be the provision of the State law, it makes a difference in the election, what happens to that State law? This would override it?

Attorney General KENNEDY. What State law are you referring to, Congressman?

Mr. WILLIS. The law of the State where such a suit is pending? Suppose a law of the State is that until the proceedings for qualification are completed that there is an impounding provision, if it makes a difference in the result; in other words, if under a similar situation as this bill presents under State law those ballots would have to be impounded.

I am not on the subcommittee and maybe my question is vague, but I do not think this has been brought out and clarified.

Mr. DONOHUE. The *Minnesota* case? With reference to what happened in Minnesota, for instance.

Attorney General KENNEDY. What happens, again, as I have said, that for the individual, for the particular case, the judge makes the ruling on whether they are qualified to vote and then an order comes down from the court giving him permission to vote in the election.

Mr. WILLIS. As I recall the law, I don't know whether it is the 1957 or 1960 act, 1957 I think—I think it was the 1957 act where we struggled with a pattern or practice provision. Now, that was the great issue and it proposed that it justified passing a Federal law on the subject in the first place. The great plea was made to us at the time, well, the right to vote will not come in until there has been a pattern of practice established. That having been established, dadgum it, he should vote.

Now, under the gimmick of this bill as I am now seeing it, the pattern of practice is done away with.

Now, because of the temporary referee provision for one thing and permitting the man to vote before the pattern of practice is established it is doing away with what was said to be sufficient cause for the Federal machinery to come into being.

It seems to me Mr. Cramer is developing, as I see it, a mighty important question, that this is a serious departure from the law on the books.

Mr. CRAMER. This is the reason I brought it up.

Mr. WILLIS. Do you follow me?

Attorney General KENNEDY. Yes.

Mr. WILLIS. That is quite a sharp difference.

Attorney General KENNEDY. There is certainly a change from what the 1960 law holds, Congressman, and the change is based on what we have developed as facts since that time, and what we have developed has been that because the cases take a longer period of time, because the litigation has been so slow, and because we have had election after election go by and individuals who, based on our investigation, college professors, college graduates, who have not been permitted to vote in an election, an election goes by, that is a right they can never establish for themselves that they can never gain back for themselves that what we are suggesting is a remedy for that problem, and the remedy that we are suggesting is in those districts where less than 15 percent of the Negroes are registered to vote that under certain circumstances a Negro who goes to the local registrar attempts to register and to vote is denied the right he can then go to the Federal court and the Federal judge hearing the case, hearing the matter, considering it, can then issue an order that he can vote in the election——

Mr. WILLIS. Without a pattern of practice having been established?

Attorney General KENNEDY. Without a pattern of practice. Even if you established a pattern of practice, Congressman, even under those circumstances you still would not have established for that particular individual that meets the qualifications and should be permitted to register and to vote, even if you establish the pattern, there is nothing magic in establishing the pattern of practice, ultimately, even under the law as it is at the present time, this is where there is no change, even under the law as it is at the present time, the 1960 act, the judge is still going to make the determination as to whether a particular individual is eligible to vote, and if he decides that particular individual, apart from the question of the pattern of practice, if he decides that that particular individual can register to vote——

Mr. WILLIS. I understand that. I understand your argument for the merit of the thing, I understand that there is no particular magic in the pattern of practice procedure, but that was the magic that justified the introduction of the Federal machinery into this thing.

Now, I think what might result is that there would be no particular necessity and, therefore, no inclination to establish a pattern of practice. This is almost doing away with the 1960 act.

Attorney General KENNEDY. Well, now, because this is the situation in only those districts where less than 15 percent of the Negroes are registered to vote. In any other district we would still have to follow the procedure under the 1960 act.

Mr. WILLIS. I see. But you have a list of those and there are about 200 of them.

Attorney General KENNEDY. Yes. Let me say, I think it would be much better as I said this morning that we were not into it, and I think it would be much better we were not extending the 1960 act. The reason we came down here and requested that is because of what our experience is in the meantime. Everybody is voting in your district, Congressman——

Mr. WILLIS. This is no problem in my district.

Attorney General KENNEDY. But there are problems in certain areas. Now, we are suggesting something that can be done about it.

There is a problem and something needs to be done about it. This is what we have come up with as a solution to it. It is as simple as that. I think it would be much better if we did not have to suggest this.

Mr. WILLIS. That you did not have to do what?

Attorney General KENNEDY. That we did not have to suggest this. I think it would be better if we did not have to have this law and the 1960 law. I think that would be ideal.

Mr. WILLIS. I don't want to belabor the point, it is doing away with a pattern of practice in areas where, as you say, less than 15 percent are qualified.

Mr. CRAMER. That is 15 percent or less who are of voting age.

Mr. WILLIS. Of voting age, and you said that this is no problem in my district. Of course it is not. According to the figures that I have and know by heart there are about 400,000 people in my district, about 175,000 white people over 21, and 72 percent of those somehow do not vote—I am sorry—and there are about 60,000 Negroes over 21 years of age, and I think 51 percent of those are not registered. So, as I say, this is no problem in my district.

The question of whether a person must have a sixth-grade education or not, I have no objection to that as a matter of State law. My objection is that at least, my understanding of the Constitution is, that should be left to the States and at least I have the precedent of knowing that since the founding of our Republic that has been the interpretation, or at least the contemporary application of the meaning of it. That is why I said I object to this on constitutional grounds.

Mr. CRAMER. If I may follow up these points for just a moment. After that I will yield to the gentleman from California.

I hope it is not counting on my time. As I understand it I have very little.

The magic about pattern of practice as I understood it in the 1960 act was that that is the constitutional jurisdictional basis under the 14th and 15th amendments so that the Federal Government could come into the picture of voting in the first place; is that not correct?

Attorney General KENNEDY. I would not think that—I would say no to that, Congressman. I think under the 14th and 15th amendments the Federal Government can become involved to protect the rights of the Negro citizens to participate in Federal election.

Mr. CRAMER. That is for the Attorney General coming in with the suits, if there was a pattern of practice proved that justified it.

Attorney General KENNEDY. I don't think again there was any magic in that. They might have come up with a different formula. That was the basis that was selected for 1960.

Mr. CRAMER. Now, you are attempting to substitute in the present bill on page 5 for the pattern of practice finding a temporary referee provision with the result that if you do not impound the ballots, people's votes will be illegally counted or in the alternative the votes are impounded and someone sits in office for a year and a half while this is being litigated, and then is removed with the possibility that his actions may be ultra vires. That leads to the conclusion that I don't know any way you can have temporary referees without working an undue hardship.

Now, let me ask you this question. We are talking about pattern of practice not now being necessary in temporary referee situations and the only thing necessary, so far as the Constitution is concerned, is that you certify in your filing of the suit that less than 15 percent of the people of a given race are not in fact registered, and that is people of "voting age." That does not mean qualified voters, that doesn't mean that they have been there a year in residence or whatever the residence requirement may be; is that not correct?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. Now, that finding of fact, which is that fact which you certify, does not become a fact to be found, right or wrong, by the court in its deliberations; is that not correct?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. So that the basis for getting in for jurisdiction in the first place is never found as a finding of fact by the court, the 15-percent figure, so that people can vote irrespective of whether a pattern of practice at some future date may be found. I want to place on the record here in keeping with the——

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Just a moment and I will yield to the chairman.

I want to place in the record at this point the cases, some six that have been decided, where in fact no pattern or practice has been found to exist. If these votes are impounded it can easily be found at a future date that no pattern or practice did exist.

The CHAIRMAN. Is it not a fact that the proceeding must have been started under the 1960 act, the original proceeding, before any temporary referee—voting referee can be appointed?

Mr. CRAMER. No; only to the extent that the pattern of practice is alleged, it is never found to exist.

The CHAIRMAN. The only allegation about the 15 percent in order to get the temporary referee appointed is very much like the allegation that the suit involves $10,000 more to get into the Federal court, it is very much like the allegation of the divergence that you get into Federal court.

Mr. CRAMER. No; if that is what you are attempting to do, Mr. Chairman, then I think it is clearly improper under the Constitution.

The CHAIRMAN. It is very much like those, I don't say it is exactly like it, it is very much like it.

Mr. CRAMER. Let me place in the record——

Mr. WILLIS. The Attorney General said that these allegations could not be challenged, you certainly couldn't challenge the allegation.

Attorney General KENNEDY. I do not see really, Congressman——

The CHAIRMAN. Is it not, Mr. Attorney General, more or less a jurisdictional requirement? That is all that is?

Attorney General KENNEDY. What we are trying to do and why we set up the 15 percent is just so we would not be going into every district. It is just a limitation that we suggest be placed on the Department of Justice so that we are not into all districts, and we are in those districts where we have found that this problem exists most acutely.

Now, again I go back to the fact I think it would be better not to do this. But there are Congressmen and Senators and public officials

that are being elected today who are being elected because of elections that will not permit those who should be permitted to vote to vote.

Now, that is a bad situation.

What we are suggesting is a Federal judge in whom I think we should have some confidence, a Federal judge who comes from the district that under certain circumstances he could pass on the question of whether an individual, after he attempted to register with the local people, he comes then to the Federal judge and says, "Can I register and vote in the election, because the election is going on in 2 months, I will never get that chance again?" By the time this is litigated and gone up to the Supreme Court on pattern of practice, that election will go by.

Mr. CRAMER. I understand your position, but I don't think you can lift yourself by your bootstraps when it comes to the basic jurisdictional rights to be in court in the first place. By substituting for the finding of a pattern of practice a finding on your part, not subject to a court determination, that 15 percent or that less than 15 percent of the people are registered is not constitutional. This amounts to substituting a Federal authority's action in registering a person for the State authority on the word of the Attorney General alone. A lot of votes were lost for the bill, I might say, in 1960. I would have voted for the bill in 1960 if the voting referee provision had not been in there taking over the authority of a public official.

I said so publicly. I think you are hurting this bill by putting in an even worse provision relating to temporary referees that can have all these results I mentioned.

Attorney General KENNEDY. Congressman, again I come back, it is not necessary to put in about the pattern or practice, it is not necessary to put in the 15 percent, these are limitations that have been imposed so that Department of Justice and the Federal Government is not going everywhere. That is the purpose of it, but we have a responsibility under the 14th and 15th amendments to see even if there is one individual, one Negro who is denied the right to vote in an election, we have the responsibility to take some action in those cases and Congress could pass some legislation along those lines. We are not suggesting legislation that be as extensive as that. What we are suggesting is legislation which would give us authority to go into just those districts where it appears that based on the fact that only 15 percent of the Negroes are registered to vote that there is a situation that needs correction and, therefore, it is not just.

The second point, Congressman, is, it is not just a referee that is passing on this, this is a Federal judge that is passing on this. This is a Federal judge who is making the decision.

Mr. CRAMER. We will cover that point in just a moment.

I would like to place in the record at this point the name of the six cases in which a pattern of practice was found, in fact, not to exist.

Attorney General KENNEDY. Could I say about that, Congressman——

Mr. CRAMER. Let me put them in and then you can comment on them, Mr. Attorney General.

United States versus Raines, Atkins, Ramsey, Lynd, Daniel, Fox, and Duke.

Now, Mr. Attorney General.

Attorney General KENNEDY. I would say, Congressman, five of those cases are in the State of Mississippi, there has not been a final determination made of those cases and they are on appeal. One case is in the State of Louisiana, I believe, and that is also on appeal, so that there is no final determination made in those cases.

We feel that all six of those cases are very strong.

Mr. CRAMER. The record is clear that the lower court did not, in fact, find a pattern of practice.

Attorney General KENNEDY. I wanted to make sure the record is corrected, it is the lower court and it is now on appeal.

Mr. CRAMER. Briefly on the point that the local authorities can contest any finding relating to a person that was not permitted to vote by local authorities which otherwise the court or referee finds should have been entitled to vote. I would like to place in the record and for the record I intended to the other day when the discussion was up and was not given the opportunity to do so.

This is the present law and would be governing with regard to that, is it not, Mr. Attorney General?

> The issues of fact and law raised by such exceptions filed by the local authority shall be determined by the court or if due and speedy administration of justice required may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that proof for the exceptions discloses the existence of a genuine issue of material fact—

and so forth. On the question of literacy and understanding of other subjects, the record shall be determined solely on the basis of answers included in the report of the voting referee.

In addition to that, the Court can, in fact, if it determines necessary to do so, appoint the voting referee to hear this case as well, can he not?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. Right. All right.

So I think that clearly shows the limitation of the right to question or contest the finding.

Now, with regard to the bill, I would like to call your attention to page 3, title I. And particularly with regard to paragraph B on line 23, which deals with errors or omissions if they are material in nature.

I ask you this in all seriousness, because it bothers me a great deal, do you not believe there is a very serious constitutional question as to the power of the Federal Government to legislate on this particular question of errors or omissions in that it clearly involves, and I hope you will follow me, clearly involves qualifications which according to article 1, section 2 of the Constitution:

> The House of Representatives shall be composed of Members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the legislature.

Are not qualifications within the sole jurisdiction of the State under the Constitution?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. Are not errors and omissions parts of qualifications that are and should be in the discretion of the State officials?

Attorney General KENNEDY. The qualifications are within the authority and the purview of the State, Congressman. Under the 14th

amendment we have a responsibility to insure that Negroes can participate in elections. The experience has been that these preliminary questions, the application form, for instance, has been used as a method to deny Negroes the right to register.

For instance, I will give you some specific examples, a Negro fills out his application form, he is asked, "When were you born?" then asked "How long have you lived in the county?" and he says, "Since birth." He is denied the right to register and participate in the election, because he should have put the date of his birth. He has already put it elsewhere.

Mr. CRAMER. I understand that, but would you answer the question? I know what the problem is, and I realize it, and I am sympathetic with it, but my basic question is, does the Federal Government, under the Constitution, have power to enact either paragraph B or C or D?

Attorney General KENNEDY. I don't think there is any question they do. We are not establishing the qualifications of the voter, Congressman, we are not establishing by either one of these provisions the qualification of the voter.

The State can establish whatever qualifications it wishes, but the qualifications have to be used across the board for white or Negro alike.

Mr. CRAMER. You don't think it is a violation of the Constitution, article I, section 2, where qualifications are reserved to the State.

Attorney General KENNEDY. We are not here in either one of these sections establishing the qualifications for the voter. The State can establish any qualifications it wants. The State can establish the qualification of grades in school, it can establish any kinds of qualifications, age, any of those matters, but it has to be used across the board equally for all.

Mr. CRAMER. Let me ask this question. The test is whether the error or omission is material under State law? Let us assume that the State law provides a form for registration. That is a qualification, right? Now, the party fills it out but maybe leaves one point blank or incorrectly fills it out, and the State has found it to be material so far as they are concerned, how can the Federal Government not fix qualifications, if at a later date they come in and say, "Yes, but we don't think that is material?"

Attorney General KENNEDY. I think you just find out what the pattern has been, what procedures have been followed. Now, what you would find in those districts, if it amounted to anything, Congressman, would be that white people who left those spaces blank were permitted to register, and Negroes who left that space blank were not permitted to register. It would be immaterial.

Mr. CRAMER. My question is are not registration forms part of qualifications that are within the power of the State to set and therefore the Federal Government cannot come in and say, we do not think that particular question required on the form is material, therefore, he should have been registered?

Attorney General KENNEDY. The State can establish the qualifications but the qualifications cannot be used in a way and a fashion to discriminate against nonwhite citizens, that is all we are saying here.

The CHAIRMAN. Will the gentleman yield briefly?

Mr. CRAMER. Yes, I will yield to the Chair.

The CHAIRMAN. Is it not true, Mr. Attorney General, that in this discussion as to qualifications and the use of forms for the purpose of registration, et cetera, should not lose sight of the fact that there are two other provisions in the Constitution besides the 1st amendment, namely the 14th amendment which speaks that no State can deny to any person within its jurisdiction equal protection of the laws, and secondly, the 15th amendment which reads:

> The right of a citizen of the United States to vote shall not be denied or abridged by the United States or any State by reason of race, color, or previous condition of servitude.

And section 2 of article 15 says:

> The Congress shall have power to enforce this article by appropriate legislation.

Am I not correct that you have to consider those two other provisions of the Constitution as well as the first amendment?

Attorney General KENNEDY. That is correct, Mr. Chairman. That is correct and also I question whether really these forms are actually forms of qualification. They are forms to determine whether a person meets the age requirements, lives in the district, that seeks the information to determine whether a person is qualified or not, so I think for the reasons that you have stated as well.

The CHAIRMAN. It says no discrimination. Of course, then the first amendment would not apply, or the section of the 14th amendment I read, but there is an abundance of evidence that there is discrimination, therefore, the two sections of the Constitution other than the first amendment will be applicable. Therefore, we have a right to legislate appropriately.

Attorney General KENNEDY. That is correct.

Mr. CRAMER. I will only say to the chairman that there is no requirement under this that a pattern of practice be found in regard to this particular phase of the legislation. One single individual could complain under B or C in New York City, for instance, without there having been found a pattern of practice. Is that not correct, Mr. Attorney General?

Attorney General KENNEDY. I did not hear your question.

Mr. CRAMER. A single individual can complain anywhere in the United States under B and C, without a demonstration of pattern of practice.

Attorney General KENNEDY. He can complain.

Mr. CRAMER. All right.

Let me ask you one more question on title I.

On page 5, line 7—lines 6 and 7, the rebuttal presumption of a sixth grade education shall be in a public or private school accredited by any State, Territory, or the District of Columbia, and then where instruction is carried on predominantly in the English language. Is it not true that that would exclude Puerto Rican voters in New York City, for example?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. Why was that done?

Attorney General Kennedy. We offered that last year, I don't know whether you included that, Congressman. We included Puerto Ricans in it. I thought it was clearly constitutional. We thought

that rather than get into that kind of a difficulty, that that legislation should be offered as a separate bill and I believe the chairman has introduced a bill dealing with the problem of Puerto Ricans.

Mr. GILBERT. Will the gentleman yield?

Mr. CRAMER. Yes; I will yield to you.

Mr. GILBERT. Mr. Attorney General, pursuing this a little further on the question of the Puerto Ricans and their rights, it is still not clear in my mind why it should be in a separate bill and not included in this bill. I wonder if you could go over that more fully.

Attorney General KENNEDY. Again it was more of a practical problem, Congressman, of the fact that there were individuals who said that they would support this legislation, that with the addition of the provision dealing with the Puerto Ricans that it raised constitutional questions in their mind and, therefore, raised a queston of whether they felt that in all good conscience they could, in fact, support it.

There were a number of Senators where this question was raised last year. Rather than affect adversely this bill we left the Puerto Ricans out.

Mr. GILBERT. Do you feel——

Attorney General KENNEDY. I do not think there is a constitutional problem.

Mr. GILBERT. That is right, that is why I wanted to ask you specifically.

Your opinion is there was no constitutional question. Because Puerto Ricans are citizens of the United States.

Attorney General KENNEDY. That is correct.

Mr. GILBERT. If Puerto Ricans attend a school in Puerto Rico where the predominant language is English they should qualify under this bill; is that not correct, sir?

Attorney General KENNEDY. I agree with you, Congressman. There have been questions raised about it. You would not, for instance, have it supported under the 15th amendment that you would have for this legislation. I think this legislation is supported by article 1, section 2, the 14th amendment and the 15th amendment, and you would lose some of that support by putting in the provisions dealing with the Puerto Ricans. I personally feel that it is constitutional.

Once again this was a question of judgment and as a practical matter I would like to see the Puerto Ricans included, but we felt that because some individuals, some people who would otherwise support legislation would raise this question.

Mr. GILBERT. If such an amendment were introduced to this bill would it have the support of yourself, sir, or the administration?

Attorney General KENNEDY. Yes, it would have that support. I would hope that the committee would consider well and take soundings amongst their colleagues about whether this would create any problem for people who would otherwise support this provision.

Mr. GILBERT. Thank you, sir.

Attorney General KENNEDY. It is a practical matter rather than any other, but I think that legislation, Congressman, is long overdue, and I think it is a very, very bad situation.

Mr. GILBERT. I have to agree with you and I am very much disturbed that it is not included in the bill.

Mr. CRAMER. Does the Attorney General have any idea as to how many million Puerto Rican voters there are in the United States?

Attorney General KENNEDY. No, I do not have that figure. Of course, I think the problem is specifically and particularly about Puerto Ricans, and I think we figured last year, Congressman, that in New York, which is the area where they are particularly, that if we could have that provision, if that provision was passed that you would have several hundreds of Puerto Ricans who would be eligible to vote and would probably register if that provision were passed by Congress.

Mr. CRAMER. I venture to say there would be several thousand, but that is my own opinion.

Even if you put Puerto Rico in the definition, for instance, instead of saying any State or Territory, say, "Any State, Territory, Commonwealth, or District of Columbia," specifically including Puerto Rico, you still have the problem of the schools in Puerto Rico not teaching predominantly in English?

Attorney General KENNEDY. That is correct, that is why that would not, in fact, include Puerto Ricans.

Mr. CRAMER. Why is there that restriction? In order to have this presumption, why must a person have a certificate of sixth grade education from a school that teaches predominantly in English? The man may speak English perfectly well but he did not go to a school predominantly English. What is the reason for that?

Attorney General KENNEDY. Congressman, after the session is over, I can give you some of your colleagues who are opposed to including Puerto Ricans in it. I am personally in favor of it.

Mr. CRAMER. I am talking about my former district now, not only Puerto Rico. I used to represent the city of Tampa and many of those people today do not speak English and did not go to English-speaking schools and still they are entitled to vote.

Attorney General KENNEDY. I am in favor of it.

Mr. CRAMER. How would you amend it relating to all people?

Attorney General KENNEDY. I sent up a bill for legislation last year which included Puerto Ricans, but, as I say, I think there were questions raised about it and I made a decision this year to leave that part out of it, introduce a separate bill because I did not want to do anything that would jeopardize——

Mr. CRAMER. What are you going to do about the Cubans down in Rebo City?

Attorney General KENNEDY. In what way?

Mr. CRAMER. They don't go to school where you have predominantly English instructions.

Attorney General KENNEDY. The ones who are American citizens?

Mr. CRAMER. Yes; they are still excluded from using this presumption.

Attorney General KENNEDY. What do you mean what am I going to do about it?

Mr. CRAMER. In the way of an amendment?

Attorney General KENNEDY. You can do that in the State of Florida, Congressman.

Mr. CRAMER. That doesn't answer the question.

Attorney General KENNEDY. Yes, it does. You could deal with the situation in Florida. You can deal with the situation in your own State, Congressman. New York can deal with it in the State of New York.

Mr. CRAMER. How can it be dealt with if we have a literacy test?

Attorney General KENNEDY. Make your qualifications; the State establishes its qualifications.

Mr. CRAMER. That is not the point, the State would have to have English instruction in these schools predominantly.

Attorney General KENNEDY. No, they would not.

Mr. CRAMER. Or else they would have to do away with their literacy test.

Attorney General KENNEDY. No; they could establish any qualifications they wish, Mr. Congressman.

Mr. CRAMER. The point I am making is they are not entitled to this presumption.

Attorney General KENNEDY. You put it in your State law, Congressman, then they will be.

Mr. CRAMER. Well, what reason is there for leaving it out of this legislation?

Attorney General KENNEDY. I believe in States rights. [Laughter.]

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes.

The CHAIRMAN. I have before me, Mr. Attorney General—I have before me the 20 States that require literacy tests. In practically 18 of those States the requirement is the knowledge of the English language, the only 2 States which seem to depart from it are Nebraska, which provides that apparently all that is required is that a voter sign his name in the register when registering, and in Virginia we have the following, we do not have it complete here, applicant unless physically unable to do so shall make application to the registrar in his own handwriting without aid, suggestion, or memorandum on the form which may be provided by the registration officer.

But all other States require that you read the Constitution and understand the Constitution or read English.

Mr. CRAMER. I understand that, Mr. Chairman, that avoids completely the question I asked.

Let me give you another sample. Mr. Attorney General, in California there are many Mexicans who have not gone to predominantly English-speaking schools. Why should they not have the value of this presumption? California has a literacy test.

Attorney General KENNEDY. Again, California can handle that like any other State, Congressman.

Mr. CRAMER. That is begging the question. Why should the Federal Government not give them the right, why should not we give the right to everybody? The States could just as easily handle the question of discrimination——

Attorney General KENNEDY. I don't think this legislation is going to remedy all of the problems, Congressman. As I have said before, we are going to have to get Republican and Democratic support.

Quite frankly——

Mr. CRAMER. Just a minute—well, go ahead.

Attorney General KENNEDY. I won't.

Mr. CRAMER. Go ahead. Well, go ahead.

Attorney General KENNEDY. I have finished.

Mr. CRAMER. Well, you certainly don't need Republican support for this. I am sure that if the inequities exist that I pointed out, everybody on the committee would support it.

I will yield to the gentleman from California.

Mr. CORMAN. I do not think the Federal Government can take away from the States the decision as to whether or not they will require the literacy examinations will be in English.

I do not think that is proper.

Mr. CRAMER. We are not doing that.

Mr. CORMAN. That is what you would do if you made it possible to raise this presumption in other than an English-speaking school. I think it is within the State's prerogative if they are going to have literacy tests. It is up to them to make the decision.

I think you would have little support on the floor of the House to raise the presumption that the State require that their voters be required to read and write English.

Mr. CRAMER. Does California require that those who apply have attended an English-speaking school predominantly?

Mr. CORMAN. No; this bill is only applicable where they have been denied the right to vote by the State, based on the literacy qualification. This does not set any qualifications that they must meet.

Mr. CRAMER. It gives them the advantage of the presumption that they are literate if they went to sixth grade, but only if they went to an English-speaking school. Why shouldn't those who went to a Mexican-speaking school be entitled to that?

Mr. CORMAN. Because to say to the contrary would be to say to the 50 States that their voters not be required to read and write English, and I don't think anybody would want to make that decision.

Mr. CRAMER. In answer to the Attorney General, I find little difference in striking out this English language requirement as far as Federal authority is concerned as I do in setting a Federal standard of written tests.

Attorney General KENNEDY. Congressman, what I suggested is it is a different kind of problem, it deals with different groups, why don't we just introduce some legislation and see if we cannot get it passed. If it is going to have unanimous support from the Republicans, I am sure there will be some Democrats who will support it. I will see if I can get a bill down to you tomorrow and we will get right to work on it.

Mr. CRAMER. That is similar then on the attitude to FEPC.

We will go to title II. I will try to be a little more expeditious in this one, if possible.

Little has been asked so far with regard to what title II actually does, even without the proposed amendment which the subcommittee put in.

Let me ask you this question. A representation has been made——

The CHAIRMAN. I want to say to the gentleman it is now 5 minutes after 3 and the gentleman has been asking questions, he has been interrupted, of course. I am going to allow the gentleman 7 more minutes.

Mr. CRAMER. I have yielded to everyone who asked me to. And I asked at the time——

The CHAIRMAN. Go ahead, Mr. Cramer.

Mr. CRAMER. I can't possibly finish in that time. There is no way I can ask a question——

The CHAIRMAN. Do the best you can.

Mr. CRAMER. In your statement on page 11, Mr. Attorney General, you stated that your one reason for objecting to the subcommittee's addition which is supposed to cover public facilities was that:

On page 11, second paragraph:

> What businesses are covered by this provision are unclear. It would seem to extend Federal regulations to law firms, medical partnerships and clinics, private schools, apartment houses, banks, insurance companies, and potentially all businesses which a State does not affirmatively ban.

Your proposal is you strike out first subparagraph (i) line 10 through 12; is that correct, but leave the rest of that amendment in? In answer to your question to the gentleman from Virginia.

Attorney General KENNEDY. Yes, that is correct.

Mr. CRAMER. That definition to which you objected, however, remains the same, does it not, it covers all the businesses that you said you thought should not be covered. The definition of the businesses covered is the same as I quote: accommodations, amusements, food, goods, or services to the public.

So it does not cure that problem, does it, that you yourself indicated was contained in the subcommittee provision?

Attorney General KENNEDY. Well, Congressman, on page 15 we list specifically——

Mr. CRAMER. I understand, that is interstate commerce.

Attorney General KENNEDY. Could I just go on—kinds of establishments that are covered. On page 16 the objective is really 4(i) where it includes all amusements, foods, goods or services to the public, when such businesses operate under State or local authorizations or licenses.

In my judgment that includes virtually every kind, type, and sort of business or establishment that operates within a State.

Now, it is quite clear that our legislation does not cover law firms. It is quite clear that the legislation that we suggested does not cover clinics. It is quite clear that it does not cover the vast majority of the barber shops, it does not cover women's hair dressers, so I could go on for a long period of time on what this covers under 4(i) that is not covered in our legislation.

Mr. CRAMER. That still does not answer the question I have. That is your definition of the business covered is the same—amusements, accommodations, foods, goods, or services.

That definition is the same. That includes—

> law firms, medical partnerships, clinics, private schools, apartment houses, insurance companies, banks, and potentially all other businesses which the State does not affirmatively ban.

According to your statement.

They would then be covered under subparagraph (ii) in a different manner where discrimination or segregation practices of such business are compelled, encouraged, or sanctioned by the State, directly or indirectly.

So you don't get around to the problem of the definition of the businesses covered by merely striking out.

Attorney General KENNEDY. Yes, we do.

Mr. CRAMER. I would like to know why.

Attorney General KENNEDY. I think I explained to the Congressman.

Mr. CRAMER. The definition remains the same on page 8, lines 9 through 16.

Attorney General KENNEDY. Of course, then you have the word "it" and then I have (i), such business operates under State or local authorization, permission or license, thank you.

Now, that is one group of businesses, in my judgment that is all-encompassing.

Attorney General KENNEDY. And then the second group, (ii), is not encompassing. It refers to those particular establishments which have direct relationship with the State, and which—therefore fall in the category of the 14th amendment, and which I discussed this morning.

Mr. CRAMER. Well, I trust the Attorney General will give further consideration to that, because it is my opinion that subparagraph (ii) is intended to be even broader than subparagraph (i). It was intended to encompass a different situation and an even broader coverage.

Attorney General KENNEDY. But it does not do that, Congressman, and it cannot possibly do that.

Mr. CRAMER. Let me ask you this question.

The other body was considering the accommodations bill before it in the Interstate and Foreign Commerce Committee. In substitution for the words "substantial effect upon" or "affected substantially interstate commerce" it sought to include the words "primarily affecting interstate commerce."

Would you care to comment on what your thought would be with regard to "primarily" rather than "substantially"?

Attorney General KENNEDY. I thought the Senate left the word "substantially" in.

Mr. CRAMER. It did. But it took a vote on it.

Attorney General KENNEDY. I would be in favor of leaving "substantially" in.

Mr. CRAMER. Now, with regard to professions and other businesses, is it not true under even the Interstate Commerce definition of the administration bill as appears on page 16 that a profession could be covered if located as an integral part of an establishment previously defined. The exact language is:

> Integral part means physically located on the premises occupied by an establishment or located contiguous in the premises owned, operated, or controlled directly or indirectly by or for the benefit of, or leased from the person or business entities which own, operate, or control an establishment.

Is it not clear, then, that a lawyer or a doctor who is in one of these establishments and is an integral part or next to it, and the establishments are owned by the same person, that they are covered?

Attorney General KENNEDY. They are not, Congressman.

Mr. CRAMER. Well, I would like to know why.

We had a lengthy discussion of this in the subcommittee, and it was generally understood they would be covered.

Attorney General KENNEDY. Well, now, if they are owned—I expect if it is a hotel doctor, or a hotel lawyer, owned, controlled by the par-

ticular establishment, then he would be covered. But a doctor or a lawyer that merely has offices in the hotel or the establishment, he would not be covered.

Mr. CRAMER. Well, I do not follow your reasoning, because the bill specifically refers on line 14 to services—a lawyer or doctor rendering services.

Attorney General KENNEDY. It says here in the bill—

means physically located on the premises occupied by the establishment or located contiguous to such premises, and owned, operated, or controlled directly or indirectly by or for the benefit or leased from the person or business entities which own, operate, or control the establishment.

Mr. CRAMER. Yes, I own a hotel and I rent two rooms to a lawyer. I am covered.

Attorney General KENNEDY. You own the hotel; you are covered. But the lawyer is not covered.

Mr. CRAMER. I do not own the hotel. I rent to a lawyer. The lawyer is covered?

Attorney General KENNEDY. No, he is not.

Mr. CRAMER. I am covered and the lawyer is covered.

Attorney General KENNEDY. The lawyer is not covered.

Mr. CRAMER. I would like you to consider that question, because I think in the language it is very clear you are covered.

Attorney General KENNEDY. I think the meaning of this provision, Congressman, is quite clear they would not be covered.

Mr. CRAMER. Let's go to title III for a moment.

This is on the Attorney General's right to bring action.

Mr. Poff brought out one question I was interested in previously. That is, even if you strike title III, the Attorney General's right and power to bring an action is still contained in titles II, IV, and III. So that merely striking title III does not cure the problem of the Attorney General bringing action on behalf of private citizens in those areas.

Attorney General KENNEDY. In particular specific areas. My objection to title III was that it was too broad. I think that it is necessary that the Attorney General have certain authority in areas where the problem has existed. And they are clearly set forth in sections II and IV. I think that, Congressman, is the difference.

Mr. CRAMER. Yes.

With regard to titles II, IV, and VII of the Attorney General's right to bring the suit, II dealing with the public accommodations, IV with education in public facilities, and VII with federally assisted programs, only in the public accommodations section does the Attorney General have to consult with local authorities. Is there any reason for omitting that step in the other two titles?

Attorney General KENNEDY. Well, it has been established—for instance, in the field of education, Congressman, it has been established since 1954, the constitutional right to—for an individual child to attend a school, desegregated school, or have his education desegregated. And so to then have it go through this process of going through the community service, we did not feel it was necessary or was really justified either; that already 9 years have passed in connection with this matter, and that the matter should be expedited, not slowed down.

Mr. CRAMER. Do you feel the same as it relates to the Attorney General's power to bring suit in title IV, since it has been broadened to include facilities operated, managed, controlled, or supported directly or indirectly by any State or subdivision, which I think was understood this morning to include contributions by the local authorities to chambers of commerce or perhaps public utilities that are controlled by the local authorities?

Attorney General KENNEDY. Once again that is a constitutional question.

The Supreme Court has held for a number of years that an individual has a constitutional right under the 14th amendment. And then the decision that just came down last spring, the *Memphis Park* cases, make that quite clear again. It says it specifically covered all deliberate speed, and said that did not mean any further delay on these matters, and it should be done immediately.

I would add also that on section 702—it has five lines— it is stated that no action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and if compliance cannot be secured by voluntary means.

Mr. CRAMER. If in fact it goes as far as to include public utilities and corporations, railroad stations, all of which are controlled by the local and State government——

Attorney General KENNEDY. I do not think it does.

Mr. CRAMER. Would you not think this service ought to be——

Attorney General KENNEDY. I do not think it does, Congressman.

Mr. CRAMER. I would like to ask that you give further consideration to that answer, because it appears obvious it goes much further than public facilities.

Attorney General KENNEDY. Well, I think you have to figure in all of these matters, Congress. You can come up with outlandish examples. I just think we are dealing with judges and people who are going to interpret these matters in a reasonable fashion, and that we should be here considering this legislation in a reasonable fashion.

Now, you can go way out into left field and come up with some examples that you think might be covered. I just do not think that any reasonable person looking at that legislation, looking at the legislative history of it, and looking at what the purpose of the legislation is, would ever conceive that the kind of establishments you suggested either in this section or earlier are going to be covered.

Mr. CRAMER. Well, of course, the problem is—I do not mean to be argumentative—the persons involved should have some way of knowing whether they are in or out by the language of the statute itself.

Attorney General KENNEDY. As a reasonable person I think it is quite clear that a reasonable person under those circumstances, under these circumstances, the history of the legislation, the background, the Supreme Court decision, would quite clearly know whether he was or was not covered. I do not think that is going to be a problem for a reasonable person.

Mr. CRAMER. Following up on the question of the differences in the Attorney General's power to bring action, comparing it with title III, which may be stricken out, and still leaving it in II, IV, and VII, under title II there is a right of trial by jury in certain cases under present law; is that not correct?

Attorney General KENNEDY. That is correct.

The CHAIRMAN. How much more does the gentleman have, because we have so many other members that want to question?

Mr. CRAMER. I have three or four more questions.

Attorney General KENNEDY. Congressman, I would agree to having trial by jury in the instances stated before the Senate, under the same circumstances that exist presently in legislation.

Mr. CRAMER. On the question of title IV, desegregation of public education and other facilities, the definition of desegregation you discussed in your statement, but I do not know whether I grasped exactly what you were attempting to get at.

Did you intend that the definition should be broad and all-inclusive, similar to that contained on page 28?

Attorney General KENNEDY. Section 407?

Mr. CRAMER. Lines 9 through 15.

Attorney General KENNEDY. Section 407?

Mr. CRAMER. Yes.

Attorney General KENNEDY. I think that the legislation when we originally sent it up involved just education, and the term "desegregation" under section 401 referred to the desegregation of schools. Our original provision dealt just with schools. Then some other additions were made.

Mr. CRAMER. Yes.

Attorney General KENNEDY. So the definition that originally was in, section 401, is not applicable to the other additions.

Mr. CRAMER. Yes. All right.

Attorney General KENNEDY. The definition under section 407, however, would cover the subject for education as well as the additions that were made. I think it is a question of drafting.

My feeling is that either we leave in—we take out the definition under 401 and substitute 407 for that, or I question whether any definition of segregation or desegregation is necessary at all. That is up to the committee.

Mr. CRAMER. Now we are getting to the nub of the thing.

Whether you use desegregation as defined on page 22 or, as a matter of fact, on page 28, although it seems more obvious on page 28, where it deals with full and complete utilization of any facility. Is it not true that, even though we in fact struck the words "racial imbalance," that the Federal courts would still have jurisdiction under this title in that it involves either full and complete utilization of a facility or assignment of students from one district to another, or to draw district lines? And the clause "equal protection of the law?" The broad definition on page 28 would clearly cover racial imbalance, would it not?

Attorney General KENNEDY. No, I do not believe it would.

Mr. CRAMER. I wish you would give further consideration to that, because I believe that the equal protection of the law, coupled with full and complete utilization of any facility, would very clearly include this authority, particularly since the court has already considered under equal protection of the laws the question of racial imbalance.

Attorney General KENNEDY. I think it says here equal protection of the laws on account of his race.

Mr. CRAMER. In other words, it was the intent of the subcommittee to try to strike out "racial imbalance?"

I do not think they did actually. I think it is included in the definition of desegregation. But if you used the definition on page 28, that very clearly would be back in the legislation.

Attorney General KENNEDY. I just do not believe that is correct, Congressman.

Mr. CRAMER. Do you have any comment on the subcommittee's striking on page 32, lines 5 through 10, which refers to not making information gathered by the community relations service public? Why was it asked for in your opinion?

Attorney General KENNEDY. We have it over here in 34, page 34, service shall hold confidential any information acquired in the regular performance of its duties.

Mr. CRAMER. Lines 5 through 10 were stricken, on page 32.

Attorney General KENNEDY. Well, I think it is covered satisfactorily over here, Congressman, under—on section 503(b).

Mr. WILLIS. On page 34.

Mr. CRAMER. That is only the latter part. Lines 5 through 7 were stricken, and 7 through 10 were left in. The objective obviously was not to give publicity to the fact that these community relations services were in the local area and the stigma that might attach if they were cooperating with the parties involved; is that correct?

Attorney General KENNEDY. That is correct.

Mr. CRAMER. Do you or do you not object to striking that phase of it?

Attorney General KENNEDY. Well, obviously we put it in originally because they thought this was the best way of handling it, that the emphasis should be on the confidential nature of the operation, Congressman.

I think that it is offered really over here on page 34. I think it is important that it be understood that it be confidential. It would be administered in that fashion in any case. And if you think there is any question about that——

The CHAIRMAN. Mr. Cramer.

Mr. CRAMER. I have two more questions, Mr. Chairman. I cannot help the length of the answers. But I am keeping my questions as short as possible.

Attorney General KENNEDY. That is not always the criterion. But that is my answer.

Mr. CRAMER. All right.

On title VII—I have a lot of questions I would like to ask, but time will not permit. But on page 43, withdrawing of Federal funds, the definition of grant, contract, loan, insurance guarantee, or otherwise, which the gentleman from Louisiana got started to discuss—I would like to ask specifically that the list you suggested be submitted. I would like to know what you as the enforcement agent feel should be included in this, rather than the Bureau of the Budget, which is not the law enforcement agent.

Attorney General KENNEDY. We are making up a list. It is in conjunction with the Bureau of the Budget. Our list will be identical. It is going to be every program of the Federal Government where Federal funds are expended, so that they are expended in a way that does not discriminate against a portion of our citizens. That is the purpose of it. There are going to be several hundred programs.

Mr. CRAMER. Well, I have been trying since the hearing started a number of months ago to get a list. We still do not have one. I think it would be helpful, Mr. Chairman, if we had a list.

Questions were asked with regard to the difference between VII before and after the amendments. Is not one obvious difference that it is discretionary under the previous draft, and it is mandatory under the amended draft?

Attorney General KENNEDY. It is mandatory to issue regulations under this draft.

Mr. CRAMER. Right.

It is discretionary under the previous draft.

It also gives the Attorney General and the Federal Government the right to seek injunctive relief, which was not in the original draft. Is that not correct?

Attorney General KENNEDY. I do not think it was specified.

Mr. CRAMER. No, it was left out.

Now, on the question of trial de novo, or right to a court determination if funds are withheld, is it not true that under the Administration Procedure Act referred to on line 19, page 44, that it is not a trial de novo on questions of fact found by the agency involved.

Attorney General KENNEDY. I think that would depend on what the particular regulations are that cover the particular agency, and the particular program, Congressman.

Mr. CRAMER. No—this relates to the court's review.

Attorney General KENNEDY. It would be under the Administrative Procedure Act.

Mr. CRAMER. All right. And that—under that act you are bound by the rule——

Attorney General KENNEDY. Governing that particular——

Mr. CRAMER. Of substantial evidence, if the finding of the agency is supported by "substantial evidence," then that is not subject to review.

Attorney General KENNEDY. I think it depends again on what the particular rules and regulations are under the Administrative Procedure Act for a particular agency.

Mr. CRAMER. I think you are avoiding that question.

Attorney General KENNEDY. I am not avoiding the question, Congressman. I am trying to answer it as best I can.

Mr. CRAMER. You are not providing for a review de novo; is that correct?

In the courts—for the administrative agency's action in cutting off funds.

Attorney General KENNEDY. I would think that was correct.

Mr. CRAMER. Yes, that is true.

And you are not therefore using a preponderance of evidence rule in reviewing facts found. Even discrimination, which is the key question, is not reversible in court if the agency's decision is supported by substantial evidence.

Attorney General KENNEDY. What occurs Congressman—that is correct. What occurs, however, is the same procedures that are followed at the present time in connection with reviewing the actions of any of the governmental agencies.

Mr. CRAMER. I understand. So within the limitation of not trial de novo, and not review of facts found by the agency if they are supported by "substantial evidence," that is the scope and the total scope of the review?

Attorney General KENNEDY. Yes.

Mr. CRAMER. I have one question, Mr. Chairman.

The CHAIRMAN. I have been very indulgent.

Mr. CRAMER. This is my last question. And I would like to ask it. Relating to title X, one question.

The CHAIRMAN. Just one question.

Mr. CRAMER. Relating to title X, the right to remand. It is true, is it not, that there is no right to review a remand order today as a result of specific action of Congress a few years ago, taking away that right of review, and what justification is there for providing review on a remand order solely and only in civil rights cases? If you are going to give it, should you not give it to everybody in all cases under this presently existing statute?

Attorney General KENNEDY. It is correct that it does not exist at the present time. The reason that we support this, which came out of the recommendations of the subcommittee—the reason that we support it is because we think there is a particular need for this at the present time in the civil rights cases.

Mr. CRAMER. That is all the questions I can ask.

The CHAIRMAN. Mr. Ashmore.

Mr. ASHMORE. Mr. Chairman—it seems almost every conceivable point has been covered, every conceivable question asked—practically all, anyway. I do not wish to be repetitious.

I might say that I guess I am primarily responsible for this session, as I asked some of the first questions when we started discussing title I. And it occurred to me that there was a great variance in the title of the bill reported by the subcommittee and the bill sent up by the Attorney General.

The CHAIRMAN. Talk louder, please.

Mr. ASHMORE. It seems the differences in the bill sent up by the Attorney General and the administration, and the bill as reported by the subcommittee—I thought that it would be wise for us to know what the administration stood for now, and whether they agreed with all of these amendments and changes that have been made in the bill. And I think that—certainly I have profited by the Attorney General coming here and talking with us today, and frankly, in many cases, telling us his position, and in some instances stating that he did not agree with the changes that were made by the subcommittee. I must say that I also certainly do not agree with them.

Like my good friend, I do not agree with any of them, as a matter of fact, although I would hasten to add that I do believe that every person should have the right to vote when he is qualified to vote.

I do not believe in discriminating against anyone for race, creed, color, or for any other reason. However, I think that we are on the verge of going so far in this situation that it has now reached the point where we are in many instances discriminating against the white man in order to try and appease or pacify—I almost said satisfy, but I certainly withdraw that thought—it is impossible to satisfy these people—"satisfy" cannot be used, because the more you give them, the more they want, as a general thing.

I still am not satisfied with the results or with the statements that have been made regarding title I. I do not yet see why additional authority should be given in the matter of voting rights. And maybe I am just thickheaded. But it occurs to me now, and it has all the time, since the matter has been under discussion, before the committee for discussion, that a person who is denied the right to register, Mr. Attorney General, by someone who may be discriminating—I do not believe you found any instances recently of that in the State of South Carolina, I am proud to say—but take, for example, a person who says that he was not permitted to vote—to register—that is the thing of it.

Attorney General KENNEDY. That is right.

Mr. ASHMORE. Because he could not interpret the Constitution or one of the cases that I believe you mentioned, where a college professor or a schoolteacher was denied the right to vote in some States, apparently because he was colored.

Cannot that person, call him Prof. John Smith, today, under this 1960 law, go to a Federal judge and complain and give that as a basis, that he was discriminated against because of his race, and wouldn't the Federal judge, by an ex parte hearing, grant him, if he so finds, the right to be registered and thus on election day be permitted to vote? Doesn't he have that right under the 1960 law—to go today to a Federal judge and complain?

Attorney General KENNEDY. You mean—nothing has happened prior to that time?

Mr. ASHMORE. That's right.

Attorney General KENNEDY. And he finds he has been discriminated against, he cannot register to vote?

Mr. ASHMORE. That's right.

Attorney General KENNEDY. Your question is, Can he then go to a Federal judge? No, he cannot at the present time.

Mr. ASHMORE. What will he have to do?

Attorney General KENNEDY. This is the problem, Congressman.

First, you have to bring a suit and establish a pattern or practice of discrimination in that particular district.

Now, the great problem has been that that takes a considerable length of time.

As I said here—maybe 2½ years—and we are still not finished in many, many cases. You can see the dates on some of these matters. It takes a long, long period of time.

After that is established, and perhaps appealed all the way to the Supreme Court—after that is done, assuming that we win the case, and a pattern is established, a pattern of discrimination is established, then he can come in and the Federal judge—then an individual can come in and attempt to register and if he is denied the right to register at that time, he can then go to a Federal judge and get registered.

Congressman, you are right about South Carolina. There are a couple of areas where there is a potential problem. It is not a problem in South Carolina.

Mr. ASHMORE. It may be farfetched.

Attorney General KENNEDY. I agree. That could be anyplace.

Mr. ASHMORE. I do not think there is any in my district.

Attorney General KENNEDY. I have here, Congressman, example after example of the kind of situation that we are talking about. And I would be most appreciative if perhaps you would get a chance to look at some of the things that are happening over the period of the last couple of years.

Mr. WILLIS. Will the gentleman yield?

Mr. ASHMORE. Let me make this observation and ask a question, and then I will be glad to yield.

I was of the opinion, or I am of the opinion, that of recent date Federal judges have ordered several hundred or several score of Negroes to be registered in certain States.

Now, what was the process or what was the procedure to get to that point?

Attorney General KENNEDY. It has been only under the 1957—1960 laws, Congressman, that we have brought a lawsuit in that particular area. And then even after the lawsuit, it has been litigated, and there have been problems about it. And then the judge, instead of appointing a referee, has decided he will register people himself. So he has gone ahead after the lawsuit and registered people.

Mr. ASHMORE. Well, can't the courts expedite those matters?

Attorney General KENNEDY. We suggested in our legislation that they be placed at the head of the docket also. Could I just read you some of these things, Congressman?

Once again, I get down to the question—I think it would be much better not to have the legislation and it would be much better if we did not have to do this.

The only reason I am up here, and the only reason we are suggesting legislation, Congressman, is because there is a problem that needs some remedy, something has to be done about it.

Mr. ASHMORE. I understand that. Where there is a wrong, there should be a remedy. However, at the same time, you cannot remedy all of them, and passing another law doesn't always help.

Attorney General KENNEDY. I agree with that.

Mr. ASHMORE. We have laws against murder, but they are still killing people. It has been so for generations.

Attorney General KENNEDY. The mere fact that you pass this legislation is not going to mean that these problems are going to go away. But what it will be, in my judgment—it is going to be an important step forward, in that we can at least gain control of the situation which we are losing at the present time.

Mr. ASHMORE. I think if you will not try to rush the thing so much, we can go too fast in these matters—and it does not pay in the long run. The thing is rapidly taking care of itself, it seems to me, under the present laws.

I would like, too, Mr. Attorney General, to say that I think you are basing this percentage of unregistered people of one race on a false premise. You state that—the bill does—where there are less than 15 percent of Negroes registered who are of registration age, I believe, or words to that effect, then they have a right to charge discrimination. That to me is a false premise for this reason.

The mere fact that 15 percent of the people of any race, or 25 percent, or whatever figure you might take, are not registered, does not in itself mean that there has been discrimination.

Attorney General KENNEDY. That's correct.

Mr. ASHMORE. And that is the basis of the whole law.

Attorney General KENNEDY. That's correct.

Mr. ASHMORE. And I think you will agree with me. Less than 60 percent of all the people in the United States vote for President.

Attorney General KENNEDY. That's correct. I do not say that just the mere fact that only 15 percent of the Negroes—less than 15 percent of the Negroes are registered to vote in a particular district shows there is discrimination. But I would say that in that 200-odd counties where less than 15 percent are registered to vote, that is where we have found a major problem. And in order to expedite the situation, and permit individual American citizens to participate in elections during this period of time, that is why we have suggested—could I just read you one case, Congressman?

Mr. ASHMORE. Let me say this.

In my opinion, the percentage of people who are registered should not be considered at all. That has nothing to do with it—because people don't go and register. It should be an individual himself, saying, "I have been discriminated against," and when he says that and proves it, I am for letting him vote.

Attorney General KENNEDY. I would say what we have done over the period of the last 2 years, where we have gone into many of these counties, we have found there is a causal connection between the counties where less than 15 percent are registered and where there is discrimination. It is not the mere fact that there is 15 percent. But in those counties, by and large, where less than 15 percent are registered to vote, there is a major effort on the part of the white citizenry which controls the county, to keep Negroes from participating in elections.

For instance, in Mississippi, Mr. Marshall just showed me out of 82 counties in the State of Mississippi, in 76 of them, less than 15 percent of the Negroes are registered to vote.

Mr. ASHMORE. That to me does not prove they have been discriminated against—although there may have been some discrimination in some places in Mississippi.

Attorney General KENNEDY. Congressman, I can show you in each one of those counties—if you would give me several hours, I could show you in each one of those counties situations which would shock you, that this is occurring in the United States in 1962 and 1963.

Negroes in the State of Mississippi are treated as extremely inferior beings. That is what it comes down to basically. And if they are permitted to register and vote in election, they are going to be able to change the system. So the whole success of life in the State of Mississippi is to make sure that individuals—Negroes cannot participate and vote in elections because they might change the system internally.

It has been my philosophy, since I became Attorney General, that the way to deal with this was not to have the Federal Government come into these areas and do it, but to have the local officials do it, and to get the local officials to do it, or to get people to register and vote and let them change the situation themselves. I think that was the key to it.

But I do not think that that is satisfactory at the present time. I think that in the last analysis, if we are going to have peace and

harmony in the United States, it is going, the problem is going to have to be rectified from within. It is not going to be Washington telling people what to do.

Mr. ASHMORE. You are right. That means Federal law is not going to do it.

Attorney General KENNEDY. Absolutely, Congressman, but in the meantime some help, some assistance has to be given to these people who cannot look to their own people. I had an argument for 5 days in Jackson, Miss., in connection with the—the dispute was whether a Negro—the Negroes had held positions at picking up garbage cans, and it was questioned whether the city was going to promote Negroes and not allow them to drive garbage trucks—not take over the city, not be vice mayor of the city, or a member of the city council and the second thing is they had to talk to me who then had to talk with the mayor of the city, because whites would not talk to Negroes in the city of Jackson, which is the capital of the State of Mississippi.

Now, what do you do under those circumstances? If you were in my position, what would you do?

Mr. ASHMORE. I would do it by evolution, by education, by trying to——

Attorney General KENNEDY. But they are not allowed to go to schools.

Mr. ASHMORE. To get them to rectify their wrong.

Attorney General KENNEDY. They are not allowed to go to school.

Mr. ASHMORE. For instance, you could tell these Federal judges before whom the cases are brought to expedite them, to put them at the top of the docket.

Attorney General KENNEDY. But they won't do that.

Mr. ASHMORE. If you tell a Federal judge to do that, he won't?

Attorney General KENNEDY. You wouldn't think of it. He would say I was interferring.

I will just give you one case here.

Mr. ASHMORE. I still do not believe Federal law is going to make them do it any quicker. It will make them mad. They will resent it more.

Attorney General KENNEDY. Could I read you one case?

This is *United States* v. *Lyon.*

On July 6, 1961, we filed a complaint. This is a voting case, and a very strong case in the State of Mississippi.

July 6, 1961, plaintiff's motion for production of records filed under rule 34.

July 10, 1961, rule 34 motion set for August 7. Court continues hearing until August 14, 1961.

July 24, 1961, defendant's motion for extension of time to plead followed.

July 27, 1961, court grants defendant's extension of time to plead until August 21.

August 8, defendant filed motion for postponement of hearing, on August 21, and moved for further extension of time to plead.

August 12, hearing on defendant's motion for postponement and more time, motion set on August 14.

August 14, hearing on plaintiff's motion for production of records. Court defers hearing until plaintiff amends its complaints to plead with particularity as in fraud.

August 21, 1961, defendant file motion for more definitive statements.

August 28, 1961, court orders hearing on plaintiff's motion for production of records continued until plaintiff amends its complaint and denies plaintiff's motion for an interlocutory appeal.

September 5, 1961, hearing on defendant's motion for a more definitive—definite statement.

September 24, 1961, court orders plaintiff to file a more definite statement setting forth its complaint with particularity as in fraud.

October 10, 1961, plaintiff files an amended complaint.

October 18, 1961, plaintiff files second motion for production of record.

October 21, 1961, defendant files motion to strike parts of plaintiff's amended complaint and move for a more definite statement.

January 4, 1962, plaintiff files motion for preliminary injunction.

January 11, 1962, plaintiff serves subpena duces tecum on defendant's registrar to produce his record at a hearing notice for January 12.

January 12, 1962, defendant files motion to quash the subpena duces tecum.

January 13, 1962, hearing on defendant's motion to strike portions of the amended complaint for more definite statement and to quash the subpena duces tecum.

January 19, 1962—well, it really takes a good deal of time. But it goes all the way over here until January of 1963—the briefs filed and submitted to the court and we still have not heard. So that is 2½ years, Congressman.

Mr. ASHMORE. Well, I admit there are cases—maybe more than I know of.

Attorney General KENNEDY. Could I present these two documents to you? Maybe you will have a chance to look at them. Or at least the committee.

Mr. ASHMORE. Let me say in passing that I am a former prosecuting attorney—had been for 20 years, and I have had a lot of people acquitted when I thought they were guilty, but when the jury said "not guilty," then I forgot the case and went on to try the next one.

Attorney General KENNEDY. I understand.

Mr. ASHMORE. We have to take them as they come, good or bad. This is not a perfect world.

The CHAIRMAN. Will the gentleman yield a minute? I think, Mr. Attorney General, there may have been an error in one of your statements. I think the impression was gained that if a person, a Negro, tried to vote and he was deprived of his right to vote on the grounds of his color or race, I think you said he could not bring a suit on his own behalf.

He can bring that suit under section 1983, which reads, "Every person who under color of writ, statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected any citizen of the United States or other person under the jurisdiction thereof to the deprivation of any rights, privileges, immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit, inequity, or other proper proceedings for redress."

That is the old statute which was passed in 1871.

I just want the record to be correct on that.

Attorney General KENNEDY. I think what we were discussing is whether an individual who felt he had been denied the right to register and to vote in the election, could go to a Federal judge and in an ex parte hearing have the Federal judge require him or give him permission to register to vote.

The only thing an individual can do is exactly what we have done—which is to bring a case, which could take a similar period of time. The judge therefore would order him to register.

The CHAIRMAN. Excuse me, Mr. Ashmore.

Mr. ASHMORE. That is all right, Mr. Chairman.

With reference to the FEPC, that section in the bill—I believe someone asked you whether or not—the question was asked whether or not you preferred that title to remain in this bill or be in a separate piece of legislation. And I think you stated whatever we thought was best, or whatever was most likely to be accomplished by way of passage of the legislation.

Attorney General KENNEDY. Yes, that's right.

Mr. ASHMORE. And you have given no more direct and definite answer than that.

Attorney General KENNEDY. I added, Congressman, I would be glad to come back after an appropriate time.

Mr. ASHMORE. Well, let me ask you this: let me ask you the same thing in a little different manner. Certainly the FEPC title now in this bill was not in the bill that you sent up to Congress early this session.

Attorney General KENNEDY. That is correct.

Mr. ASHMORE. With reference to one other matter—let me interrogate you a moment on this withholding of funds. I am sure you have seen where Senator Russell and some of the other men with more experience than I, more prestige, have stated that this is one of the most vicious pieces of legislation, or words to that effect, that they have ever seen. And I feel the same way about it.

I think you are overemphasizing this thing. This is another place where you are going entirely too far with regard to Federal legislation. And you go so far in this case to where you are punishing innocent people—I mean the law if it is passed—for what one or two or a few individuals might have done. I cannot see how it would be equitable or just or fair or even reasonable to say that all funds would be withheld from a State—and that is what it would be, wouldn't it—from a school district, say, because one person was discriminated against.

Attorney General KENNEDY. Well, could I say, Congressman, I think first Senator Russell and the others who made statements about this section of the legislation were talking—their criticism was aimed at the legislation the way it was originally introduced. It has been changed considerably since that time. And I think it is far fairer legislation than it was when it was originally introduced.

Mr. ASHMORE. Fair what?

Attorney General KENNEDY. Fairer—fairer to those who are the recipients of the programs and those who participate in the programs. I am not saying there is anything but still strong criticism by Senator

Russell and others of this section. But I think the section now is far better than it was originally. That is my first point.

I think first the fact you have judicial review—and the second—the strong point is that the fact that the rules and regulations dealing with the problem are set out so that everybody understands it. Everybody understands what regulations they have to meet, what rules they have to follow, if they are going to receive the aid and assistance.

Mr. ASHMORE. Rules and regulations are the things I am opposed to.

Attorney General KENNEDY. I understand, Congressman, but it is set forth now. And that I think is better than originally.

Mr. ASHMORE. What are the conditions now since it has been modified?

Attorney General KENNEDY. What it sets forth is that basically there will not be discrimination in the expenditures of any funds, there will not be discrimination against any individual based on his color or his country of origin. The particular program, with that as a general criterion to follow, will establish the rules that will be followed in the administration of the program—so that the recipients of the program will understand what they can or cannot do. Then if there is a problem, if they feel that—if there is a breakdown and there is an allegation that they have violated the rules, then there can be judicial review. So I think that is an advantage of the program—although there is still strong criticism about it.

Mr. WILLIS. Will the gentleman yield? Will the gentleman yield for a question?

That disturbed me a great deal, as I indicated this morning, as to how it was going to work. Mr. Attorney General, you said that discrimination occurring under one program would not result in shutting off funds in other programs.

Attorney General KENNEDY. Not at all. In fact, I can make it clearer, I would hope that even the shutting off of the money would not be necessary. I would hope that first you would be able to work out the problem in an amicable way, that they would sit down and discuss it and see what might be done, that you would decide then whether it would be necessary, as a last resort, to cut it off.

Mr. WILLIS. My question is this—not that I am saying that would be the practice—but as a matter of the wording of the statute before us, there would be no requirements as to how far reaching the discrimination would have to be, such as in connection with the 15 percent rule under another section. In other words, so far as the wording of the statute is concerned, it would be legally possible for one person being discriminated against under each program—one person, which is extreme—that is the statute, as I understand it—one person could cause the shutting off of these various programs.

I am only asking if there is a provision as to how far reaching the discrimination would have to be.

Attorney General KENNEDY. Well, I think if it was a program of some——

Mr. WILLIS. It would be a matter of judgment in the administration of the law?

Attorney General KENNEDY. If it is a program of some dimensions, Congressman, I do not think that cutting off—discriminating against one individual would bring about cutting off of the program. As we

said here, specifically covering that, it says, "It shall be consistent with achievement of the objectives of the statute." And so I would like that you would just attempt to work that out, and use the good judgmen of the administrator of the program.

The CHAIRMAN. Wouldn't there have to be rules and regulations published in the Federal Register?

Attorney General KENNEDY. That is correct.

The CHAIRMAN. They could be disputed, they could be changed, hearings could be had on those rules.

Mr. WILLIS. Well, the authority we are giving—I just wanted to know what the statute says.

Mr. ASHMORE. On that point, Mr. Attorney General, it just occurs to me——

The CHAIRMAN. Would the gentleman yield? At page 43 you have the following language—on page 43, line 19:

Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that the requirement cannot be secured by voluntary means.

Mr. ASHMORE. That may be true, Mr. Chairman. But I am against the principle of holding this over a man, over a person's head, a citizen of this country, and saying, "This is going to be done to you if you do not do such and such." He has no hearing, he has no trial, and he has nothing.

The CHAIRMAN. There would be judicial review.

Mr. ASHMORE. Well, the funds are already cut off. You have got to go through court. His money is stopped. He may be feeding his family with it, he may be a disabled veteran, he might not be able to work a lick, he may be a social security recipient. What are you going to do then? We get right back to your point—you have to go to court.

The CHAIRMAN. They could go to court.

Mr. ASHMORE. Yes; that's what I say. It is all right to make him go to court, but we don't want to make anybody go to court under title I because it would cause too much delay. You see this thing of expediency works both ways. But if he has the right to do it in one case, it should be the same thing in the other case.

Now, Mr. Attorney General, you stated that you did not believe under the law as written, your interpretation of it, this title, that one particular person discriminated against in this situation would cause funds to be cut off.

Now, that brings to my mind an order of the Secretary of Defense recently where he has ruled that if one place of business, as I read it, in a town or a village or a city where a military installation is located—if one place of business discriminates against some soldier because of his color, the whole town is put off limits, everybody is punished.

Attorney General KENNEDY. I do not believe that is correct. And certainly there are business establishments that are discriminating at the present time in areas where there are bases, and the cities, the communities have not been put off limits.

Mr. ASHMORE. Well, certainly there are some instances. But I say—I most strongly disagree with the Secretary of Defense——

Attorney General KENNEDY. I do not think that that really——

Mr. ASHMORE (continuing). In making such an order.

Attorney General KENNEDY. I do not think this kind of order has been issued, Congressman.

Mr. ASHMORE. He said he would issue them; maybe he has not done it yet, but he is on the verge of doing it.

Attorney General KENNEDY. I'll tell you the honest to goodness truth, I never heard of such orders.

Mr. ASHMORE. That is in the Gesell report, and he has implemented it.

Attorney General KENNEDY. I never heard of such—I would say I have never heard such orders discussed, or contemplated. I say that to you first. And secondly——

Mr. ASHMORE. If he is going to do it, if I am right in that, somebody may disagree with you on this.

Attorney General KENNEDY. He is not going to do it, Congressman. I would think it is quite clear that nothing of that sort has been done as of the moment. And it is not being contemplated. I mean if that is what he was going to do, it would have been done. But it is not being done.

Mr. ASHMORE. Well, that is the meaning of the Gesell report, or that is the recommendation as I see it.

Attorney General KENNEDY. I think what the intention of the Gesell report is, is to—in these areas of the South where there is discrimination, where Negroes are sent from all over the country and are required to go down into some of these communities, and then treated in a fashion that is completely unacceptable to them, because they are being treated as second-class citizens, that this is unjust and unfair. And the purpose of the Gesell report and the intent of all of us, I would think, is to try to remedy that situation. But I think that we are trying to do it through discussions and conversions and see if progress cannot be made, Congressman. That is the intent of this administration, the Government.

But I would hope also there would be cooperation in some of these other communities to try to make progress.

Mr. ASHMORE. I do, too. But I think it is unreasonable to put a whole town off limits because of one or a few establishments discriminating against someone. I think it is a punitive measure by Executive order, or by some department head, with people who have no chance to do or say anyting for themselves, that is just not the way we do things in this country.

Attorney General KENNEDY. Could I ask a question, with all due respect?

Mr. ASHMORE. Yes.

Attorney General KENNEDY. How do you feel about an individual who is perhaps drafted into the Army, or he volunteers, and he has just come back, perhaps, from Korea, and he has been wounded, and he is sent to a community, and he is sent on a base—it is not his choice—he is sent to a base, and it is in a community where they have these kinds of practices, and he is discriminated against. Doesn't that cause you concern also?

Mr. ASHMORE. They should not discriminate against him. But I do not think the whole community should be punished because maybe one or two places have discriminated against a man.

Attorney General KENNEDY. Wouldn't you also agree that a major effort should be made by those communities that border on these bases?

Mr. ASHMORE. I agree. Let's educate them and try to persuade them, show them that is wrong, and not to do that. But let's avoid legislation and let's not let expediency take over.

Attorney General KENNEDY. But on the other hand, if there is not going to be some effort from some of the Southern States to try to work with us—I have people that call me on the phone and they would just keel over and die if anybody knew they were talking to us on the telephone.

Mr. ASHMORE. Let's get back to where I started.

Attorney General KENNEDY. We need some help from down there.

Mr. ASHMORE. South Carolina surprised everybody when they tried to integrate Clemson College—it went right through and nothing was said. It is still good. Nothing is being done at all to intimidate or injure or make it hard on this Negro man there at school. When the *Greenville, S.C.*, case—my hometown—came to the Supreme Court—I do not agree with the decision—but within 1 week after the Supreme Court made its decision, which I disagreed with, the mayor and the city council repealed everything they said was wrong.

Attorney General KENNEDY. I think——

Mr. ASHMORE. We are cooperating.

Attorney General KENNEDY. I think—that is fine in South Carolina. And I have said it. And I hope it has not hurt South Carolina too much. But when you talk about this rather major step that has been taken, what you are saying is that there is a Negro in a university in the State of South Carolina in 1963. I mean that is what it comes down to. We have a long way to go, all of us.

Mr. ASHMORE. We have got to do it by evolution. We cannot do it by revolution.

Attorney General KENNEDY. We will do it much better if we get a little push from you, Congressman.

The CHAIRMAN. Any further questions, Mr. Ashmore?

Mr. POFF. Will the gentleman yield for a question?

What would be the venue in such a judicial review? On the withholding, under the withholding of funds provision.

Mr. ROGERS. It depends upon the nature of it. There are certain authorizations where it would be with the Secretary of the Interior in the State of Colorado, for example, under certain circumstances. But usually the venue is in Washington, where the Secretary is.

Attorney General KENNEDY. Our judgment is, Congressman, that you could—suit would be brought either—it could be brought in the district in which the administrator operated, or where the individual who was suing lived, or it could be brought here in the District of Columbia.

Mr. POFF. Now, the Attorney General has raised what I consider a vital point.

Mr. WILLIS. You have legislation on that, don't you?

Mr. POFF. I was about to say last year I offered legislation which became law, over some rather intense opposition, I might say, which amended the general statute to make it possible for the first time for venue to be in the district in which the plaintiff resides or when property is in issue where the property is located.

Of course, the language in this bill makes specific reference to sec-

tion 10 of the Administrative Procedure Act. And I am wondering if that might have some effect on the venue, and if so, what.

I hope that it would be, as the Attorney General has suggested; namely, that venue might lie in the district where the plaintiff bringing the suit resides.

Mr. KATZENBACH. Could I say, Congressman, that we supported that legislation and the result was I got sued in two places in Mississippi.

The CHAIRMAN. Mr. Dowdy.

Mr. POFF. May I have another moment, Mr. Chairman?

The CHAIRMAN. You may qualify that.

Attorney General KENNEDY. Congressman, the way we think, from the wording of the legislation we think it is clear it is down there and could be down there. But if that needs to be further clarified, we will be glad to work with you in clarifying it so that it would be in the local district.

Mr. POFF. Obviously, one of the indispensable parties would be the head of the agency concerned, and ordinarily his residence is in the District of Columbia. I think this question might usefully have been explored.

Attorney General KENNEDY. I think your legislation really covers this, doesn't it, Congressman?

Mr. POFF. I hope it does.

Attorney General KENNEDY. If it doesn't cover it, you might study this, and if there is any question in your mind we would be glad to add on whatever would make it clear it covers it—that the individual could sue in his own district, rather than have him come to the District of Columbia. I think that is much fairer.

Mr. POFF. Thank you.

Attorney General KENNEDY. Congressman, can we leave it that we will hear from you if you do not think it is clear enough?

Mr. POFF. I will be glad to have the benefit of your help in drafting it.

Attorney General KENNEDY. Our judgment is it is clear as it is. But if you think there is still a question about it, we can go to work and try to work on some further language.

Mr. MCCULLOCH. Mr. Chairman, I have no desire to usurp the functions of the chair, but in view of the fact that our colleague, Mr. Meader, has spent countless hours in the subcommittee working on this, and as I understood from a parliamentary inquiry earlier today, we were going to go back and forth across the table, I hope if Mr. Dowdy is now recognized that time will not be cut short for Mr. Meader.

The CHAIRMAN. No. Mr. Dowdy.

Mr. DOWDY. I have a few questions.

One thing I think, of course, has been pretty well established by all the statements made, and that is that this is before us under duress, a threat of mob demonstration. That was stated again by you yesterday—that only if we act promptly can we expect the victims of racial discrimination to continue to seek remedies through law rather than in the streets.

Of course, I never have operated very good under duress or threat.

Now, you have stated in your testimony here today and yesterday that in spite of that you feel that this bill should be weakened from

what the subcommittee gave to us, and the feeling that that weakened bill would satisfy the duress or the threats.

Attorney General KENNEDY. Can I make some comments on that? I do not think this legislation is being based on the fact that we considered it on the basis of threats or duress. I think that there are problems, injustices, which will not be tolerated any longer. And I think the time is long passed, Congressman, when we should have taken the action, taken steps to deal with these injustices, these problems. I think the fact that we have not done this, those of us who are white, has led the Negro population to feel that—discouraged, and feel that they are not going to get answers to their problems. And so they dealt with them in those areas in whatever way they have seen fit. And the best way they feel toward redressing some of these difficulties.

Now, so far as the second point, in connection with the weakening of the bill, I have suggested some changes in the bill over the subcommittee legislation. I think that the legislation that we recommended originally is better fitted to the problem than the legislation recommended by the subcommittee.

Mr. DOWDY. Actually, I was prefacing something else.

I have a wire, and I expect the other members of the committee also have had it—yesterday—from one Stephen Spottsfield, chairman of the board of directors, NAACP, in which he says:

> Provisions as reported by the Subcommittee No. 5 are the minimum required for a meaningful bill and nothing less will persuade Negro citizens—

and so forth—skipping some of it—

> The Executive Committee of the Board of Directors of the National Association for the Advancement of Colored People, meeting here today, calls upon you to support and vote for legislation which includes FEPC, across-the-board authority for the Justice Department in civil rights violations, and a public accommodations section with real coverage—

now here is the point—he says—

> Anything less under today's circumstances simply invites America's colored citizens to press their fight in the streets.

In other words, if you cut this bill any, they say they are going to fight in the streets anyways. So that throws the duress thing out of it—if there is a proposal to weaken the bill, doesn't it?

Attorney General KENNEDY. I do not understand your question.

Mr. DOWDY. That eliminates—does away with any persuasiveness in your statement that the enactment of this bill will remove the threat of street fighting, doesn't it?

Attorney General KENNEDY. What I am saying, Congressman, is that I think that without the passage of legislation—the NAACP or this individual who wrote you the telegram, they can reach any conclusion they want, and they can send any kind of a telegram they want, and they can agree or disagree with what I think. They are American citizens and they can reach any conclusions they want.

My judgment is the legislation we have suggested and recommended will deal with the problem that is facing us at the present time.

Mr. DOWDY. I had particular reference to the threat in here that if there is anything less than the subcommittee bill passed, that they will press their fight in the streets. That was—that threat was the part that I had reference to.

Attorney General KENNEDY. Yes. And I suppose you have on the other side—if you pass the legislation you are going to have the Governor of the State of Alabama saying that you are going to have to move all the troops back from Berlin so you can occupy Alabama. I think what we should do is just consider the legislation based on what the problems are at the present time.

Mr. DOWDY. I think so, too. But you had commented that the reason for it was this duress on us.

Attorney General KENNEDY. No, Congressman, if you just take my whole statement and not take one sentence out of context, you see why I think the legislation should be passed.

I think the legislation should be passed because it will remedy injustices that have gone on far, far too long. I think we have a responsibility to our fellow citizens. I think that if we do not deal with this problem, and deal with it in a substantial, definitive way, then I think that members of this country will get disillusioned and discouraged.

Mr. DOWDY. There were a couple of statements in answer to some questions made this morning that I was interested in and concerned about.

I would like to have the State that this example took place that you mentioned where a registrar required a person who was applying to register to vote to be able to read Chinese.

Attorney General KENNEDY. There isn't any such case.

Mr. DOWDY. You mentioned something about reading Chinese.

Attorney General KENNEDY. What I said is you could not ask them—one person to read a paragraph from the Constitution and ask somebody else to read Chinese.

Mr. DOWDY. Well, the record will be printed. I was rather disturbed that such an inference would be left.

Attorney General KENNEDY. Well, let me get it correct. I never heard of any registrar that asked anybody to read Chinese.

Mr. DOWDY. And another one I would like to know about—where it happened——

Attorney General KENNEDY. Congressman, you will find some rather interesting examples of what has been required in these two books.

Mr. DOWDY. Well, that one seemed like it was awfully strange and I wanted to know where it was.

The other one I would like to know—you mentioned where some little children were arrested for carrying a flag on Flag Day.

Attorney General KENNEDY. Jackson, Miss.

Mr. DOWDY. What were the circumstances in connection with a child carrying a flag on Flag Day? Is that all that happened?

Attorney General KENNEDY. They walked out of a church carrying flags on Flag Day and they were arrested.

Mr. DOWDY. And they didn't do anything else? Nothing else connected with it?

Attorney General KENNEDY. No. Selma, Ala., just last week the Negroes were told, after we brought a case, 15 Negroes had been registered in 10 years. We brought a case charging discrimination. The judge finally ruled that the Negroes should be permitted to register. They lined them up and started to register them. A Negro could not

step out of line—they were in line, 200 of them. The sheriff made it clear that if they stepped out of line they could not get back into line.

Mr. DOWDY. Was that part of the little child carrying the flag?

Attorney General KENNEDY. I am going to give you another example. I can give you a number more. They could not get out of line to eat lunch, they could not get out of line to go to the bathroom. When two other people came to try to give them sandwiches after they had been standing in line 4 hours, they were arrested. I can go on for as long as you've got.

Mr. DOWDY. I didn't ask about that. I just wanted to know——

Attorney General KENNEDY. Jackson, Miss.

Mr. DOWDY. I hope none of my questions require an extensive reply. I have some notes here. This question will have to do with title II of the bill. You stated yesterday or today that this public accommodations section of the bill was based on the commerce clause in order to get around the effective law of the land as announced in the *Civil Rights* cases of 1883. Isn't it a fact, or is it, that all of the acts of Congress which have been passed and based on the commerce clause were primarily designed to regulate the economic and business affairs of life, while the purpose of this particular title, the basic purpose of the bill, is to regulate the moral and social affairs? And this is the first time it has been done, isn't it?

Attorney General KENNEDY. If I might just throw out the Mann Act as an example, Congressman.

Mr. DOWDY. What?

Attorney General KENNEDY. The Mann Act was passed under the commerce clause.

Mr. DOWDY. That is criminal——

Attorney General KENNEDY. Under the commerce clause.

Mr. DOWDY. That's true. But it is part of the enforcement of criminal law.

Attorney GENERAL KENNEDY. It is under the commerce clause.

Mr. LIBONATI. The breaking of the social and moral law across State lines for illicit purposes.

Attorney General KENNEDY. I can give you some other examples if you like. The movement of lottery tickets, the movement of slot machines, the movement of gambling information.

Mr. DOWDY. All of them violation of criminal laws.

Attorney General KENNEDY. That's correct. We did not put any criminal penalty in this.

Mr. DOWDY. This is not a violation of criminal law.

Attorney General KENNEDY. No. We have not suggested that it be a violation of criminal law. I might say most of the public accommodations bills in the States are criminal laws. But ours is far less stringent than any of the State laws. And there are about 32 of them—except possibly the State of Maryland.

Mr. DOWDY. Well, now, let's see.

Attorney General KENNEDY. The Civil Rights Act of 1875 was also—also had criminal penalties. We have not attached any criminal penalties to this act.

Mr. DOWDY. I would like to go a little bit further on that right now.

In your opinion are there any restraints put upon the Congress by the Constitution in attempts of Congress to regulate interstate commerce?

Attorney General KENNEDY. Yes.

Mr. DOWDY. What are they?

Attorney General KENNEDY. There has to be—first there has to be a causal connection between the problem and the remedy. It has to have an effect on interstate commerce.

Mr. DOWDY. Well, aren't the first 10 amendments of sufficient strength?

Attorney General KENNEDY. Yes.

Mr. DOWDY. Now, you mentioned State law—some States having laws, these public accommodation laws. What grounds are they based on?

Attorney General KENNEDY. Police powers of the State.

Mr. DOWDY. That's true. And that police power is lodged in the State rather than in the Federal Government; isn't it?

Attorney General KENNEDY. That is correct. So, therefore, they have authority to deal with this problem themselves, and it would be much better if all of them did.

Mr. DOWDY. Now, actually the provisions of this bill would place the owner of an establishment that is subject to its provisions, which is practically everybody—placed in the category of a public servant; would it not?

Attorney General KENNEDY. No; it would not.

Mr. DOWDY. They would have the same authority over him as a public servant.

Attorney General KENNEDY. No; not at all.

Mr. DOWDY. If I ran a boardinghouse or a roominghouse for truck-drivers only, do you think that this bill would prevent me from—force me to take a couple of doctors into the house also?

Attorney General KENNEDY. No; I don't think it would.

Mr. DOWDY. If I ran a boardinghouse only for redheaded men, would that force me to take a Negro in?

Attorney General KENNEDY. If you had a redheaded Negro.

Mr. DOWDY. I am talking about a true redhead—I am not talking about someone that dyed his hair.

Now, suppose you were operating a place of business, a restaurant, a nice restaurant, and a person came in with dirty and greasy overalls on, and you felt that it was not to the best interest of your business to serve him. Would you be forced to serve him?

Attorney General KENNEDY. No.

Mr. DOWDY. Now, you could exclude him.

Attorney General KENNEDY. That is correct.

Mr. DOWDY. On what grounds?

Attorney General KENNEDY. Just that you did not want to serve him, he was not dressed properly.

Mr. DOWDY. What if he were a Negro?

Attorney General KENNEDY. You can exclude him because he was not dressed properly.

Mr. DOWDY. Now, who would make that decision? You would not be permitted to do it yourself as the owner of the establishment.

Attorney General KENNEDY. Yes, you would, Congressman.

Mr. DOWDY. But suppose he takes you to court and you have to answer his lawsuit, and he says you excluded him because he was a Negro and you said because he was not dressed properly. And you as Attorney General would be in there representing him.

Attorney General KENNEDY. No, I would not take that case. I would make an investigation, find out if he came in in dirty overalls, and I would say, "You should not have gone to the restaurant, you were not dressed properly."

Mr. DOWDY. Suppose on 12 separate days 12 separate Negroes dressed in dirty clothes wanted service in the same establishment, and each of them came and told you that they were being discriminated against because of their color, and in each instance the management, of course, said he kept them out because it was their appearance. Would that be a pattern, the kind of pattern that you are looking for?

Attorney General KENNEDY. No; I would think that the restaurant—until they went back and put on clean clothes and washed themselves, I would not take them.

Mr. DOWDY. Even though there was a conflict between their testimony and the white man—you would be taking the white man's word as opposed to the Negro's word, or the 12 Negroes' words?

Attorney General KENNEDY. I am taking your word as to what the facts are. The facts are that they come in in dirty overalls, 12 days in a row, so I would not let them in the restaurant.

Mr. DOWDY. That's true. But then you would not have me testifying there.

Attorney General KENNEDY. Congressman, I do not know what the facts are independently. I have the facts as you give them to me. You are telling me what the story is.

Mr. DOWDY. Now, I believe it is on the same title—"prohibition against denial of interference with the right to nondiscrimination."

You do agree that people have the right to discriminate somewhat.

Attorney General KENNEDY. Yes.

Mr. DOWDY. But there was a case decided by the Supreme Court—I believe it was *Peterson* v. *City of Greenville* in which Justice Harlan said:

> The freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations, are things all of which are entitled to a large measure of protection from governmental interference.

If there is to be any right of property in this land, a person certainly has a right to use his property, because it is his.

Do you agree with Justice Harlan's statement in this case?

Attorney General KENNEDY. I would say that I agree with that basically, Congressman.

Mr. DOWDY. You do agree with it.

Attorney General KENNEDY. Yes, I agree. I do not agree with the judge in the finding in that case. But I would agree generally with that statement. Perhaps I would express it a little differently, but I would agree generally with it.

Mr. DOWDY. Do you feel that under this bill as we have it here, there is actually the taking of property without compensation by the Government?

Attorney General KENNEDY. No, I do not.

Mr. DOWDY. You remember the Supreme Court said in a case, I believe it was the *Dickenson* case, in which the Court held that property is taken within the meaning of the Constitution when inroads are made upon the owners of it to the extent that servitude has to be imposed upon it—in other words, the owner's right of freedom of choice as to its use has been impaired.

Attorney General KENNEDY. Well, let me just say this—I am not familiar with that statement or the case. What I say is that I think it is quite clear that Congress can pass legislation in this field under the commerce clause. I suppose, Congressman, when you pass legislation that a person who owns a restaurant and serves oleomargarine has to serve it in the form of a triangle and not a square, that he has to put a sign up, that you tell a person who runs a drugstore how he has to mark his drugs that he sells, that when you tell a store owner of an establishment that he has to pay $1.25 an hour to his employees, when you tell a person who is in business how many hours the employees can work, when you pass a law that says that people can belong to labor organizations and an employer has to deal with them—you have got situation after situation which has an effect on business. It has an effect on the lives of individuals.

If you walk out of this room and you have to stop at a stop sign, you have to stop at the red light.

These rights that we have are not complete unimpaired or uninfringed upon. And legislation can be passed, and quite clearly passed, which is constitutional which has an effect on the absolute right of property.

Mr. DOWDY. You are talking about property or services that are being sold, and I am talking about use of private property.

Attorney General KENNEDY. Well, Congressman, 32 States have laws now at the present time which say that—which are far more stringent than title II we are suggesting. Does that interfere with private property? The States of the South have laws that you cannot serve Negroes. Does that interfere with private property?

Mr. DOWDY. We have been into that. We agreed, I thought, that States have a police power.

Attorney General KENNEDY. Congressman, you have got to examine that. If you say that you have a constitutional right to property, and you cannot pass a law which infringes on that property, certainly then the States do not have the right to do so.

Mr. DOWDY. The laws against segregation—against integration which you mentioned are commonly called Jim Crow laws. You will probably remember, and I would think you have studied that part of history and of law—following the Civil War there was no problem on these Jim Crow laws or anything about that sort of laws in the South or anywhere else until a vicious Congress passed the civil rights laws which the Court held to be unconstitutional.

Attorney General KENNEDY. Congressman, the Jim Crow laws were passed after that.

Mr. DOWDY. Certainly.

Attorney General KENNEDY. Right.

Mr. DOWDY. And they were passed after the *Civil Rights* cases of 1883.

Attorney General KENNEDY. Right.

Mr. DOWDY. It did not occur to anybody before. And this problem which we have today would never have come up, in my mind, had it not been for the Congress getting out of line back in 1870.

Attorney General KENNEDY. But it was not in effect, Congressman. It did not come into effect. It was declared unconstitutional in 1883. It was out.

Mr. DOWDY. It developed into these things.

Attorney General KENNEDY. Right. But they were unconstitutional in 1883.

Mr. DOWDY. It threw race relations backward then just as this will do.

Attorney General KENNEDY. It was declared unconstitutional. How could that happen?

Mr. DOWDY. Certainly it was, because it was unconstitutional. And just as this is unconstitutional.

Attorney General KENNEDY. I thought you said that the reason the South passed the Jim Crow laws——

Mr. DOWDY. It put it into the heads of the South, this thing of trying to force something that they were doing anyway. It is just like here. Whenever you are talking about—I can remember when the Negro people didn't vote in my State. But they all vote now. And they have for 20 or more years. You come along after something has already been taken care of, taken care of itself—just as was done back there 80 or 90 years ago that I had reference to—and so race relationships—give them a big setback.

Attorney General KENNEDY. Well, I question that the reason that the Jim Crow laws were passed—I think it was quite to the contrary. When they found the Federal Government and Congress could not pass legislation which would protect the Negro, then the States began to pass laws which would put the Negro back as he had been at the time of slavery without the official title or label of slavery.

The second point I would make is the point you are making. By passing this law we are interfering with property rights. By the passage of the Jim Crow laws you were interfering with property rights. And yet I do not know anybody in the South was objecting at that time. You are interfering and affecting property rights.

The CHAIRMAN. May I make this statement, Mr. Dowdy: We had agreed this morning that the end of the day would wind up the appearance of the Attorney General. It is now 20 minutes to 5. I hope that questioning will not be unduly prolonged. We have a great many members yet who have not asked questions. I do not like to cut anybody off. I do not like to do that. But because of the exigencies that have developed, I hope everybody will be able to ask questions.

Mr. DOWDY. I think my questions have been pretty short. I have a couple more and that is all.

The CHAIRMAN. Just try to curtail them.

Mr. DOWDY. In title VII I notice religion was excluded. What was the reason for that?

Attorney General KENNEDY. We just have not found any discrimination in religion.

Mr. DOWDY. In title IX—and this will be my last question—I know there has been much agitation over the years, nearly as long as I can remember, that all reference to the color of a person should be elimi-

nated from all records that are kept by the Federal Government. And yet here you are drafting into the law something that will bring color back. It is my understanding that the Negro people objected seriously to the fact that they were shown to be Negroes on the various records that were kept. Why do you change it by law after they asked that it not be?

Attorney General KENNEDY. I think it is just a census, which I think would be perfectly proper, to find out——

Mr. DOWDY. I always thought it was proper.

Attorney General KENNEDY. I think it is for a different purpose, Congressman. It is to find out the particular situation, find out what the facts are—any more than you are finding out how many Negroes there are in the United States. I suppose the Census is finding that out now.

Mr. DOWDY. I have no objection.

Attorney General KENNEDY. When you say that it is off the books, it is off the books in a certain regard. But in this connection, I think it would be perfectly proper. I do not think there would be any problem.

Mr. DOWDY. I think in the employment records of the Federal Government there was some ruling or regulation passed that none of the records should show whether they were white or colored. And I thought that was done because the Negroes wanted it that way. Is that right?

Attorney General KENNEDY. I do not know why it was done. I think it is probably a good idea. I do not know why it was done.

Mr. DOWDY. As a result of that having been done, though, at considerable expense to the taxpayers, earlier this year I believe it was they called by telephone all over the world to find out how many Negroes were working in each office and agency of the Government. Does that eliminate the necessity of that in the future?

Attorney General KENNEDY. No.

Mr. DOWDY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Meader.

Mr. MEADER. Mr. Attorney General, I want you to know that I was a member of the subcommittee and have lived with this question long before our hearings began in May, and my concern has not been confined to working hours, either.

My aim in the subcommittee has been to shape a bill which has a chance of becoming law, which is well drafted, meaningful, and defensible.

We worked in the subcommittee on that basis—until about the time the tax bill was considered on the floor of the House, when a completely different attitude appeared. That is when amendments were added on which you have given testimony yesterday and today.

I take it from your testimony that no impetus from the Department of Justice was responsible for the addition of those amendments. Is that correct?

Attorney General KENNEDY. Let me put it this way, Congressman, I have opposed in my statement—I opposed the amendments yesterday, and when I understood the amendments were being considered—although I did not know them in detail, I was opposed to them continuously.

Mr. MEADER. Do you have any knowledge of the source of the impetus?

Attorney General KENNEDY. I think that is a matter which really should not be discussed with me, Congressman. The source is not from the Department of Justice or the executive branch of the Government. Let me say this. I should think that some Members of Congress conscientiously felt that the addition of those amendments would materially assist in this struggle. And I think they are certainly entitled to their point of view. I do not happen to agree with them. And perhaps you do not happen to agree with them. But I would not question their motivation.

Mr. MEADER. Well, I received the same telegram that apparently Mr. Dowdy did, and that he read in part to you, which as he pointed out, indicated that if the subcommittee version were altered by removal of those amendments which came in about the time the tax bill was under consideration, that "simply invites America's colored citizens to press their fight in the streets, since they will understand that Government will not or cannot provide the relief so sorely needed."

And I think he referred to your testimony yesterday, in asking you a question about the demonstrations being cured by this legislation.

I would like to read this passage from yesterday's transcript. It appears on page 61.

Attorney General Kennedy. Yes, I think that the way to approach this problem, Congressman, as I said in my statement, is to try to meet the substantive injustices. I think that if the rest of this legislation was passed, which deals with voting, which deals with public accommodations, which deals with education, which deals with employment, I think that the reason and purpose for many of these demonstrations and what occurs following the demonstrations, I think much of that would disappear.

Now, that would lead to the philosophy, or lead someone to believe, unless it is explained, that we must pass this legislation to avoid demonstrations. Is that the position you take?

Attorney General KENNEDY. No, Congressman. The amended title III is aimed at the police action that follows the demonstration. Now, in my judgment first you have the substantive problem. That is, failure to take action. If that is not remedied—if there is a substantive problem and something is not done, then you have demonstrations. That is the second stage.

Then the third stage is the police, perhaps—alleged police brutality aimed at the demonstrations.

Now, title III in my judgment—I think it is quite clear from the discussions, and those who promoted it, supported it—title III is aimed at the police, which in turn is aimed at the demonstrations. In my judgment, Congressman, the way to deal with the problem is not to try to deal with steps 2 and 3, the relationship between the demonstrators and the police, but the way to deal with the problem is to deal with the substantive issue, which is over here, and which the legislation attempts to deal with.

I do not think—in other words——

Mr. MEADER. I do not know where you got the impression that part 3, or title III was added to the bill for the purpose of dealing with police brutality. Title III was not in the bill when public hearings were held—your testimony was taken with respect to title III—or what

it was aimed at. And as I recall the discussion of the subcommittee, which is very brief, mostly on technical drafting matters, it was not advanced as a means of coping with police brutality, but was simply broad powers of the Attorney General to deal with all kinds of violations of constitutional rights.

In any event——

Attorney General KENNEDY. I do not want to have any confusion about that.

I would say the reason I had that impression, and it is quite clear in my mind, and Mr. Marshall, who has to work with these matters continuously, is the fact that everybody that suggested title III—"everybody" is too broad a term—but those who contacted us and argued strongly for title III, argued on the basis of police brutality. Racial groups, civil rights groups, individuals, Members of Congress, Members of the U.S. Senate, who have been interested in our support of title III have argued for it on the basis of the fact that it would prevent police brutality. So therefore I said in my statement there that in my judgment the way to approach this was to deal with the substantive issue, not to try to deal with the relationship of the demonstrators to the police.

Mr. MEADER. Well, let me see——

Attorney General KENNEDY. I think if you read the paragraph with that in mind, it will be quite clear to you.

Mr. MEADER. Well, let me make a statement and see if you agree with me.

I believe that legislation at the Federal level is required to deal with this problem of denial of rights.

I voted for the Civil Rights Act of 1957, which was the first law, Federal law, in 85 years to carry out the 15th amendment. And I voted for it because I thought it was right. Anything I am going to vote for in this bill I am going to vote for because I think it is within the power of the Federal Government, and that there is an obligation on the Federal Government to take action in this field, because it is right—not because there have been demonstrations.

Attorney General KENNEDY. Right, I think that's the correct attitude. And I think the criteria that you suggested—stated—as to how you are considering this legislation, Congressman, is the criteria that all of us should follow.

Mr. MEADER. In your statement opposing the inclusion of title III, on page 62 you state:

> I think it is very difficult for you to draw those narrow lines of where you would approve the Department of Justice or the Federal Government going into these matters, and, as I say, I think it is an extension of Federal authority which I think I would be reluctant to see Congress take.

Now, here is another passage:

> I think there are certain substantive actions that need to be taken by Congress, but I do not think we should go so far that we would regret giving this kind of power.

I thought I recalled the Attorney General saying in one exchange yesterday that title III could be immense power, and would be bad for the country.

Attorney General KENNEDY. I do not know if I used those exact words—but that is the substance. And I think that is what I said.

Mr. LIBONATI. He said "broad powers."

Mr. MEADER. I thought the word "immense" was used.

Now, this leads to a concern that I have had, not only with respect to this legislation, but other legislation.

I had been concerned about the growing tendency of the Federal Government to enforce public policy through the sanction which I call government by injunction; and the reason for my concern is that it is a stripping of citizens, when proceeded against by their Government, of their rights and protections guaranteed by the Bill of Rights; and it is my understanding that the reason for the Bill of Rights was precisely to protect citizens from tyranny by their Government.

Does the gentleman agree with me?

Attorney General KENNEDY. Yes, I do.

Mr. MEADER. Now, if there were another method of enforcing public policy in this area than to have the Attorney General go into a Federal court and get an injunction or a mandatory order, where the presumption of innocence, proof beyond a reasonable doubt, where the right of cross examination, confrontation, and trial by jury would be guaranteed, if the sanction were a criminal sanction—would the Attorney General think that the method should be used which leaves to the citizen most of his rights?

Attorney General KENNEDY. If it accomplishes the purposes, Congressman. If it accomplishes the purpose that we wish to accomplish, remedies the injustice, and gives the necessary authority in some field so that an individual can move in a meaningful way, I would be in favor of that.

Mr. MEADER. In general, you would agree with me that government by injunction, if we can use that term, should not be used, if there is any other way to accomplish the purpose.

Attorney General KENNEDY. What I think is that none of this legislation should be—I would be against—if I did not think this was the only way we could deal with this problem, I would be against this legislation. I think that every time the Federal Government passes a law in any of these areas it has its backwash and has its ill effects. And I think it is much better if these matters are left to the citizens, the local communities, and to the States and that the Federal Government stay out of it.

Mr. MEADER. In a similar vein, I would like your reaction to the expansion of the interstate commerce clause and the expansion of the equal-protection-of-the-laws clause of the 14th amendment as is proposed even in the administration bill.

Does this not strain the equilibrium of our Federal system by so subjecting State and local authorities as to move in the direction of one centralized, powerful, national government?

Attorney General KENNEDY. In the first place I would say, Congressman, that the establishments that we are suggesting be covered by this bill are already covered, all of those establishments are already covered by other laws under the commerce clause. We are not going into any new areas that are not already covered by the commerce clause and legislation that has been passed by Congress. So it is not an extension of power. To the contrary, however, if it is just placed under the 14th amendment, and it is the way it has been reported, suggested, or recommended in the past, and you put it under the licensing theory, you are extending the authority of the Federal Gov-

ernment into areas that it never contemplated, and in a way that never had been contemplated in the past.

What we are doing is covering only establishments and only businesses that are already covered by the commerce clause already.

Then I go back to the fact that was needed—I go back to the fact that there are injustices that need remedy. So without extending Federal authority beyond what I have mentioned, every time you pass a law you do that to some extent—but not creating a new theory of Federal authority, we place this primarily on the commerce clause with support on the 14th amendment.

In other words, I do not think it really does that.

Mr. MEADER. You are not concerned about continually expanding the commerce clause, moving in one area after another?

Attorney General KENNEDY. Congressman, as I say, I think it would be much better if we did not do this, and if we did not have to have the legislation. But what I am balancing are the equities—the drawbacks of having some legislation versus what the problem is. And I think it is so overwhelmingly in favor of dealing with this problem in taking some action, because it is not going to be done at the local level—it can't and won't be done at the State level—that it is required of us to take some action to deal in helping to assist in this situation.

I balance the two.

I'm against going beyond what we have to go.

A group such as the group that sent you this telegram thinks we should go into other areas. Other people think we should go into other areas.

I feel that we should take this step. We have not found that these other areas are the basis of this kind of a problem. So therefore I am against and opposed of going into those areas which just extends Federal power for its own purpose, and which I would oppose.

Mr. MEADER. Well, as I said before, I think there are some areas where the Federal Government should not take action.

We should not use these rather emotional issues as a means of expanding Federal power which may upset the equilibrium of our system of separation of power between the States and the Federal Government.

Now, here is one area not suggested in the administration bill, and it is one that I have wondered about for a long time.

Section 2 of the 14th amendment is mandatory in requiring that the representation in States where Negroes are denied the right to vote should be reduced. Congress is given the authority to carry that out. That is a mandatory provision. But so far as I know, aside from Senator McNamara offering an amendment to the 1957 civil rights bill, to set up a joint committee of Congress to do the calculating necessary to effectuate section 2 of the 14th amendment—outside of that, nothing seriously has been done. And I am wondering if the administration gave any consideration to carrying out section 2 of the 14th amendment. And if they did not, why did they not?

Attorney General KENNEDY. Well, Congressman, we did consider it. We considered it seriously to determine what we could do to cover that provision of the Constitution. And the difficulty, at least up to the present time, has been to come up with figures with exactitude

on the number of Negroes that have been denied—who are eligible and should be permitted to vote, who have been denied the right to register and to vote.

I would hope from the census that was taken—that is to be taken if this legislation is passed—plus the work we are now doing in each one of these counties in some of these States, that perhaps in the future that we would have some more meaningful statistics that we could work with.

Mr. MEADER. If there were a workable means to carry out section 2 of the 14th amendment, would you be in favor of including it in this bill?

Attorney General KENNEDY. Well, I believe the general principle I would support, Congressman. I think it would be a question of how we would phrase it. But the answer to your question is I would support the principle of it.

Mr. MEADER. I yield the floor.

The CHAIRMAN. Mr. Libonati?

Mr. LIBONATI. General, I compliment you on your position on those provisions of the bill that you felt would be controversial to the point of arresting any progress within this committee, or the Committee on Rules, and with great clarity you have discussed each proposal in conformity with your original bill, which the administration supports.

Now, with respect to the first provision, you stated that if there were any need for the State or local governments to receive corrective legislation, to bring about the ultimate goals that are set out in the specific intent of that provision, that you would ask for that in the future; that you were satisfied in limiting the bill to the Federal program.

Then as to the question of the formula on a limitation of the 15 percent, you stated that under the sense of judicial notice, with conditions such as they were, and evidentiary facts brought in by a petition submitted to the court by various persons, claiming that they were denied their constitutional rights in voting, that that pattern would be established in the court's mind, and then they would proceed in a procedure that in realty is injunctive in nature (enforcement by orders of court that), someone to do their duties, where under the circumstances they deprive the person of their right to vote. And you took a very solid position there.

Attorney General KENNEDY. Yes, sir.

Mr. LIBONATI. Now, on this other question, on accommodations, there is some question relative to the coverage of the act on retail stores, small tourist homes, small boarding houses, and so forth. And your position was that in the interpretation of these violations, cognizance would be given to the factual circumstances; if they were in a community, and so forth, that there would be no action. So that was your position there.

On the third question of civil action for deprivation of rights, you said it was too broad, and of course there are circumstances where the Attorney General would have to defend persons of questionable reputation.

Also the Attorney General's office may find itself in an anomalous position where they would be on both sides of the table—one Assistant Attorney General defending an agent of Government who violated someone's civil rights, and then on the other side the individual who

without funds asked for this service. So in that regard you were very correct as to your views on that section.

Now, on the question of desegregation of public education, I think you made known to all of us that in that respect you would consider the fact that that probably is one of the most important sections of the bill.

Attorney General KENNEDY. Yes, sir.

Mr. LIBONATI. And that ultimately in conference with the Supreme Court decision and public thinking, that no laxity should be considered in that provision.

Of course on the other hand you said that sound discretion would control any activity on your part to determine the values of destroying the whole community school system where they had integrated, and one unit had not. So that is within your power to make that determination.

Attorney General KENNEDY. Yes, sir.

Mr. LIBONATI. And certainly in the public interest, no one need give you guidance on that, because you are a man of integrity and understand the responsibilities of your position.

Now, on the question of the Community Relations Service, that is a good service. That service influences the local conditions and promotes the acceptance of certain standards on the part of people who are being criticized because they do not live up to certain standards. And your social workers and so forth would do a good job there. That is an important service in the bill.

Attorney General KENNEDY. Yes.

Mr. LIBONATI. Now, on the question of the Commission you stated that instead of a permanent Commission, that 4 years would give time to work out problems, to evaluate the services rendered and necessity for such service, and that you thought with a 4-year period, that with this new law, and implemented with these powers, that some results could be surveyed and that the value the Commission would be determined by itself in its work. And that is a good compromise.

On the question of the Federal assisted programs, I think there again will come into play the sense of discretion of the officer as the Attorney General, who makes the determination, especially affecting matters where prejudice may result from the fact that labor unions won't bid and problems will be presented to Government that no general contractor will bid being confronted with problems he has no control over in activating—in his activation on his contract.

Attorney General KENNEDY. Yes.

Mr. LIBONATI. So that that again rests with the Attorney General and his determinations.

On the question of Federal assistance of employment opportunities, that is a very important question. That question has been resolved in some 31 States and the District of Columbia at that level. Whether or not it has inured to the benefit of the Negroes is a question, because it takes in all groups. Therefore he could, under certain circumstances, lose opportunity for employment by the determination that others in greater numbers than those that presented themselves for this opportunity would claim they were prejudiced against.

But there should be some compromise on the FEPC provision in this bill. And not to go too far so as to prejudice the Negroes' chances,

or not to in any way make determinations that would destroy his opportunity to work or help solve this problem, and this brings out again the salient feature of the administration bill. It rests upon opportunity of employment.

Attorney General KENNEDY. That's right.

Mr. LIBONATI. So that you fully had covered all these matters. And as a matter of fact you surprised many members of the committee because of the liberality of your views and the practical position you have taken on some of the most salient points which did bring criticism of you, but in conformity with your expressed desire to get a bill, if that is the only way you can get it. It is true that any controversial piece of legislation can only be successful and must be through action of compromise. Believe me, I have been in legislative bodies 29 years and I know—and was the leader of my Senate when I came here.

So that I compliment the Attorney General on his fortitude and courage in retreating from a position that some of us like myself could vote on the bill as it was received from subcommittee No. 5. Yet we look at our brothers here, and we say they cannot vote for it—what can they vote for. And so we will do the best we can for passage of this bill.

I thank you for the time you have spent with us.

Mr. WILLIS. Will the gentleman yield for a question?

Mr. LIBONATI. If it is not personal, yes.

Mr. WILLIS. I want to go off the record.

(Discussion off the record.)

The CHAIRMAN. Mr. Kastenmeier?

Mr. KASTENMEIER. Thank you.

Incidentally, I appreciate the Attorney General assuring the gentleman from Michigan that there is no conspiracy, nor was any conspiracy between the Justice Department and the rest of us on the committee, and also in imputing to us motives purely out of the desire for a strong bill.

We have been through this before, as you know—charged with partisanship. Some people think the leadership conference, or the tax bill, or the Justice Department caused us to come out with a strong bill. As far as I can tell none of these were the case. The committee reported the bill because they saw it that way. I am sorry that others don't, may I say.

But in connection with an area where the subcommittee did disagree with the Attorney General's recommendations on elections, State or Federal, I recall the example that you put to the gentleman from Georgia, that if he were a Negro, denied an opportunity in Georgia, would he not, too, being unable to get a remedy, want to demonstrate, or at least indicate resentment.

After what you have said today, particularly about the Negroes lined up 200 in a row seeking to vote, I do not understand how you can feel that it is not necessary to have State elections in the bill. Putting yourself in that lineup, with the Negroes, and being told that the Attorney General says this is for Federal elections only, how would you feel as a Negro in Mississippi?

Attorney General KENNEDY. Well, I think I made my position clear. First, Congressman, I have no objection to having the State and

Federal in. In my judgment, as a practical matter, Congressman, if you have Federal elections in, it is going to require—it is going to be virtually impossible as a practical matter to set up one booth for State elections and one booth for Federal elections in connection with registering to vote. I think that is a virtual impossibility. So therefore I think if you cover Federal elections you will, as a practical matter, cover State elections as well.

The second point that I would make is that there is some feeling by some—now, I do not know what the numbers are, but there is some feeling by some that they would support Federal elections, but they would not support State elections. That might not be just here in the House of Representatives, but it is in the Senate as well.

I think that the vote on this bill is going to be very close. So therefore all I say is that if we can include Federal and State elections, get the bill by on a bipartisan way, that it would be supported—this kind of effort would be supported by both Republicans and Democrats, and that it would not cause any difficulty or put the bill in jeopardy—then I think it should be included. If it is not included I do not think it is a catastrophe, because I think as a practical matter the result would be very much the same. But as it was set up here, if we find after a year or so we are not able to work these things out, perhaps we would have to come back.

Mr. KASTENMEIER. I wish I could believe, as you believe, that there would not be a dual system.

Attorney General KENNEDY. Of course, Congressman, as you know in our legislation the referee provisions cover both Federal and State elections.

Mr. KASTENMEIER. I quote this out of yesterday's paper, the Washington Post, about Virginia.

Proposal to establish a dual registration system maintaining the poll tax for State and local elections probably will be put before the general assembly. Those who vote in Federal elections would be required to file a certificate of residence every 2 years.

Now, I think as a practical thing all you have to do is to look at your own records—what even judges and local officials would do in terms of delay, the massive resistance to voting that will be put up in certain areas of the South. It is not very difficult to conceive of them having a dual system. They are enacting laws now for a dual system. It is almost impossible to conceive they would cave in and accept laws on Federal elections as controlling Federal and State elections—at least in my estimation.

Attorney General KENNEDY. Congressman, if we can get it by—if I were on this committee, I would support your position on that. I think that that is the safest and the best way to proceed. I would hope that it was included. I just raise the question—I do not want to lose support for the bill based on that. But I would support your position if I was on this committee.

Mr. KASTENMEIER. Thank you.

I would like to conclude by saying section 1971 that we amend, which is now under A, is even—currently a very strong statement, though made in 1875 as law. And that is the section, the subsection that the new language goes in.

The subcommittee would have proposed to make it State or Federal. And the first portion of it reads:

> All citizens of the United States otherwise qualified by law to vote at any election in any State, Territory, district, county, city, parish, township, school district—

and so forth. It is a very strong statement, in the subsection that we intend to modify by this additional legislation. And it would appear out of character completely that 88 years later we would be so restrictive in how we want to implement this, it seems to me.

Attorney General KENNEDY. Thank you, Congressman.

The CHAIRMAN. Before I call on the next gentleman, I just want to tell a brief story as a sort of interlude.

I was in my temple one Sabbath, and the good rabbi of our temple said he was going to tell us about the prophets of the Bible. He spent about an hour on Amos, another hour on Josiah, another hour on Isaiah, one more hour on Zachariah, another hour on Micah. And then he lit up and said "Now I come to Malachi. What place shall I give Malachi?" And somebody in the rear of the temple said, "Give him my place—I'm tired."

Nonetheless, we are going to finish up. I am going to call on Mr. Shriver.

Mr. SHRIVER. Mr. Chairman, the questions that I had are mostly answered.

Your comments, Mr. Attorney General, have been very helpful to me in understanding the bill.

I personally appreciate your frankness and candor.

There is one question that has been bothering me from your statement—it was made yesterday—relating to the matter of State and Federal elections where you say:

> In my view therefore they would be unconstitutional, even as applied to State elections. Others do not share my views in this regard.

Now, I am wondering, without taking the time of the committee, if you have any brief or any discussion of this constitutional question.

Attorney General KENNEDY. Could I prepare that and provide it to you?

Mr. SHRIVER. Surely. But I do not want to take the time for a discussion of it. Perhaps the committee has it.

Attorney General KENNEDY. We submitted one last year on that.

Mr. COPENHAVER. On the question of poll tax.

Mr. MARSHALL. Also on the question of the validity of the literacy test bill, which would be applicable to these—we can send you a copy of that.

Attorney General KENNEDY. I think it is a question of the legislation, if it is Federal elections, Congressman, it is based on article I, section 4, the 14th amendment and the 15th amendment. If it is article I, section 4, there is a strong basis for the Federal Government passing this kind of legislation. If it is State elections, you no longer have article I, section 4, and you have to rely on the 14th and 15th amendments. And therefore it can be attacked—if it loses one constitutional base it can be attacked with more reasonableness if it applies to both Federal and State election. That is one argument. The other argument really is that Members of Congress and others are reluctant

to see the Federal Government passing legislation which deals with State elections.

Mr. SHRIVER. I understand that. I meant the constitutional question.

Attorney General KENNEDY. What I have given you is the constitutional question and problem and the argument. It is my judgment that it stands up alone under the 14th or 15th amendment—you do not need article I, section 4. There are some people, and it is not a large number—it is generally accepted that it is constitutional. But there are some people, including Members of the House of Representatives and the Senate—there are some who have a question about that, and also have a policy question.

So two of those factors raise the whole point of whether we would lose some votes that we need to obtain the passage of the bill.

Mr. SHRIVER. Thank you.

Attorney General KENNEDY. Could I spell that out a little bit more for you by sending you a short memorandum?

Mr. SHRIVER. Yes.

The CHAIRMAN. Mr. Gilbert?

Mr. GILBERT. Thank you, Mr. Chairman. I am going to follow your admonition.

The CHAIRMAN. Mr. Corman?

Mr. CORMAN. This may never be discussed again, so I will take the privilege of saying briefly that I do not believe any Member has heard more of the testimony than I have, and I supplemented that with 9 days of traveling in Mississippi and Alabama. I do not believe that anyone can get a feeling of the problem from the testimony. I think 1 day in Jackson, Miss., and 1 day in Yazoo would do more to gain support for this legislation than 6 months of hearings.

There is one problem on page 16.

Attorney General KENNEDY. Could I say, Congressman, I could not agree with you more. And it is just the fact—we who have been working with this, and have seen these matters go on, that is why we have difficulty understanding really the opposition to it.

Mr. WILLIS. Will the gentleman yield at that point? I have spent 59 years, and you sort of get a different evaluation of the depth of it and perhaps a different impression.

Attorney General KENNEDY. Are you talking about Jackson and Yazoo?

Mr. WILLIS. Well, I'm talking about the Third Congressional District of Louisiana.

Attorney General KENNEDY. Congressman, it is quite different, though. It is quite a different situation from the places that he discussed.

Mr. CORMAN. I visited a great number of places in the South, and those two places are very different from other places I visited. But you are correct—you cannot become an authority in 9 days.

The public accommodations section, 15, of the confidential print, in line 9 to 16, itemizes some things you feel should be covered—section 3. It is your view that those things which are specified we want to cover, we want to prohibit segregation——

Attorney General KENNEDY. Yes.

Mr. CORMAN. Discrimination.

Attorney General KENNEDY. Yes.

Mr. CORMAN. Then wouldn't it be proper to add paragraphs 1 and 2 of paragraph 4 onto that paragraph? In other words, we say we covered these specific kinds of businesses. If they are held out to interstate travelers, or if they involve interstate commerce. Wouldn't it also be proper to say that we want to cover them if they are licensed by a State, or if there is discrimination or segragation practices which are encouraged?

In other words, we still limit the business that we would cover, but we add the constitutional ground on which we cover them.

Attorney General KENNEDY. I think you could do it that way. You mean, therefore, that you insure that it is going to be under not only the commerce clause, but under article XIV.

Mr. CORMAN. Yes. We do not expand the kind of businesses that we cover, but we expand the constitutional basis on which we cover them.

Attorney General KENNEDY. In principle we could agree with that. As it is an important matter—I see what your point is. And I think we could support that. And that would be acceptable. But I would like to make sure that the language is exact and we put it in at the correct place.

Could we work with you on that?

Mr. CORMAN. Yes.

Just a brief comment on whether or not we ought to cover State and local election. I would strongtly urge that we do, because we say we are going to give a remedy at the ballot box. And the remedy that the Negro needs most in some areas is a remedy against a recalcitrant local official who would be much less recalcitrant if he realized the person he may be abusing today may be a voter at his election tomorrow. That is why I would be most hopeful that the Congress would decide that each citizen has a right to vote in a local election, and that is as important a right to him as the Federal election. Because some of us are opposed to too much Central Government and believe decisions should be made at the level of cities and counties and States, whenever possible.

The other thing was pointed out by Mr. Kastenmeier. I was told by a couple of elected officials in Mississippi that they would do anything necessary to preserve their "way of life." There is no question but that you will have a dual voting system in the State of Mississippi if local government is not covered.

Attorney General KENNEDY. Could I just have a moment, sir? Could we just find out—there are some differences as to what exactly you meant on your first suggestion.

Mr. CORMAN. Public accommodations.

Attorney General KENNEDY. Would you put that in as a part of IV?

Mr. CORMAN. Yes, sir. We would just eliminate on page——

Mr. MARSHALL. Would you make it iV?

Mr. CORMAN. Small i would become sub 5, and small ii would become sub 6 of 3. You would eliminate four altogether. So that of all of your reasons for covering these specified businesses would be—I concur with you maybe this needs more study. But I would be much distressed if we abandon the 14th amendment approach to those businesses that we decide we want to cover. I agree with you that there

is something to be said for being specific. And that is what paragraph 3 is.

Attorney General KENNEDY. Rather than commit us to any language, if we could just try to work out the principle, I think that there is some question if put it in as V—but it is possible we could work out some language.

Mr. MCCULLOCH. Mr. Chairman, does this line of questioning indicate that there is at least a tentative change of approach to this very important section?

Attorney General KENNEDY. No. I think what we have stated, and what I have stated from the beginning, is that we are putting it under the commerce clause, the establishment under the commerce clause, which can also be supported under the 14th amendment as well. It is the same establishment. And those establishments that are covered by the commerce clause. But they would also have the benefit of the support of the 14th amendment as well—which I think, Congressman, is also a suggestion that has been made by others.

Mr. FOLEY. On the answer you just gave to Mr. Corman, Mr. Attorney General, earlier there was some suggestion or discussion on page 16, lines 10 and 11, to eliminate this.

Attorney General KENNEDY. That's correct.

Mr. FOLEY. Now, I just wanted to keep the record straight—that in discussion with Mr. Corman, you have not deviated from the elimination of that.

Attorney General KENNEDY. We are eliminating that provision.

Mr. FOLEY. And just replacing it—eliminating it completely from the bill, and the remainder then would go in as he outlines.

Attorney General KENNEDY. We want to make sure whatever is necessary to indicate that this is supported by the 14th amendment as well as the commerce clause, whatever language is necessary to insure that.

The CHAIRMAN. Mr. Mathias.

Mr. MATHIAS. Thank you, Mr. Chairman.

Mr. Chairman, at the outset you appealed for my cooperation in considering favorably this legislation. And I think your candor and moderation certainly should win for you that bipartisan and objective consideration of your views as you requested.

Referring to title I of the bill, I have had many visits from members of the clergy and representatives I think primarily of the Student Nonviolent Committee, expressing some lack of confidence in Federal district judges to discharge the duties imposed under title I in assigning cases—rather the administrative and the judicial functions that would fall to their lot.

Do you have any such doubts in your mind about this—does the Justice Department have any question?

Attorney General KENNEDY. We have disagreement problems with district court judges on some of these matters. It is my judgment, however, we are going to have to have confidence in the judiciary. I think they will fulfill their duty and meet their responsibilities.

Mr. MATHIAS. This is my own view. But these people have pressed very hard that we should consider the possibility of bringing the circuit judges into the picture.

Attorney General KENNEDY. I would be against that. I think that is a real extension, and I think that we should—members of the judi-

ciary take an oath of office, that we must have confidence in them, or otherwise it questions our whole system.

Mr. MATHIAS. Turning to title III, there is a question which I think has not been discussed here, but which may well erupt on the floor when we have a debate there. Perhaps it is just as well to explore it here to some degree. That is the question of the attitude of the Justice Department if it received a request for assistance or a complaint which arose under any one of the existing miscegenation laws which are on the books of the several States.

Would title III create in its present form any right of action in this regard?

Attorney General KENNEDY. I think that the Supreme Court has not passed as yet on the constitutionality of those laws, so I think that we would not be able to tell at the present time.

Mr. MATHIAS. In other words, your present view is that the Justice Department would not act upon any such complaints?

Attorney General KENNEDY. My present view is that I hope that you do not pass title III so that that question won't come before us. But——

Mr. MATHIAS. I am asking this question in some sympathy. I have a specific case in mind of a Navy veteran who happened during his term of Navy service to be assigned to Shangri-la, which is now known as Camp David. He liked the locality, and he liked the young lady in the neighborhood, and married her, and they now have children. He stayed at that locality. I suppose he is a Malayan by race. And his son just the other day was denied a marriage license. This kind of thing could well erupt at some point.

Attorney General KENNEDY. I don't—we do not have the authority now. I think it is up to the particular individual and the particular case.

Mr. ROGERS. If the gentleman will yield for a comment. The title III, as amended, would only apply to the Constitution and the laws of the United States. That is what it would have to come under.

Mr. MATHIAS. I think I understand the Attorney General's position.

Attorney General KENNEDY. I just do not know. I suppose if you passed title III—if the law, I guess, is declared unconstitutional, I expect probably it would be necessary to get into it. But that has not been done as yet.

Mr. MATHIAS. Passing on to title VII, page 42 of the confidential committee report, there is a rather broad delegation of the rulemaking authority in that section. I am interested by the fact that termination of Federal benefits would come not upon failure to comply with the act of Congress, but upon failure to comply with one of the rules which would be made pursuant to the act of Congress, which is of course a rather shadowy thing.

Now, I am in sympathy with the objective of this. I have voted for many amendments to legislation on the floor which would accomplish the same objectives. But I am concerned with the breadth of delegation of rulemaking authority here.

What is your position?

Attorney General KENNEDY. Well, the reason was, Congressman, there are so many different programs—as I said there are several hundred different programs. And to try to write out something specifically

in legislation as to what should be done, and what rules and regulations would be issued is virtually impossible. You would have different steps under—well, under each one of the programs, such a differentiation between various Government programs, whether it is the school lunch program or some other. You would have a different approach and a different method, a different system of doing it and handling it.

So we set forth at the beginning what the policy is, and then each governmental agency can make up their rules and regulations based on that.

Mr. MATHIAS. Does it not, however, lead you, sir, into the very difficulty which anticipates my next question.

The statute refers to the rules and regulations of general applicability. While I grant you that the scrivener's problem would be tremendous here, what do we mean by general applicability? Take the school lunch program. Suppose there were some discriminations in the school lunch program. Does this mean that the school is going to be cut off from school lunch funds, or in your judgment would you cut the school off from area aid?

Attorney General KENNEDY. No, just from the particular program where the discrimination exists.

Mr. MCCULLOCH. Would the gentleman yield for one question?

If there were discrimination in the school lunch program within the school district, would it affect the schools that were not discriminating and those that were discriminating as well in the same district?

Attorney General KENNEDY. It would just be the ones that were discriminating.

Mr. MCCULLOCH. How could you separate them? As a practical question, how could you separate them?

Attorney General KENNEDY. Well, I would figure out some way, Congressman. Actually that is what you would do. Obviously that would be the intent and the purpose.

Mr. MCCULLOCH. Will the gentleman yield for just one statement? I am sure the Attorney General knows that the State of Ohio was penalized under some such rule and regulation to the extent of well over a million dollars in the thirties, when a million dollars was really a million dollars, and it was in a program for aid to the needy, in a quarrel between a Democratic President and a Democratic Governor.

Every person who had been receiving this aid for the needy had the sanctions visit upon him.

I just give that for the record.

Mr. WILLIS. Will the gentleman yield for an observation on this point?

My friend from Ohio told a story of his situation. I can relate a situation in reverse.

Money was being pumped into Louisiana. The late flamboyant Senator from Louisiana—he passed a law to say it shall be unlawful for Louisiana to receive any funds.

Mr. CRAMER. Will the gentleman yield for a quick question? On the miscegenation question—it is illegal to marry or live together in a State like Virginia, or some other Southern State. If you are married outside that State and go to that State and seek accommodations in a hotel or motel—isn't it true under the accommodations title

that it would be a discriminatory action for the owner or the operator to not permit those two people to live together in that motel?

Attorney General KENNEDY. Yes.

Mr. MATHIAS. If I may——

Attorney General KENNEDY. Perhaps he could put them in separate rooms, Congressman.

Mr. CRAMER. The accommodations section specifically provides that all persons shall be entitled without discrimination or segregation on account of race, color, or religion to full and equal enjoyment. "Segregation" is the keyword involved.

Mr. MATHIAS. Mr. Attorney General, I would take it from your remarks that it is the position of the administration that in withholding funds from a program, that it would not be a whole State or a whole county or a municipality. It would be very closely particularized.

Attorney General KENNEDY. As specific and particular as it possibly could be. And that would be done, even withholding of the funds would only be done after every other effort and step had been taken to try to work the situation out. That would be only the last action that would be taken.

Mr. MATHIAS. Would you object if we could devise some language which would express that intent more specifically?

Attorney General KENNEDY. No; I would not object.

Mr. MATHIAS. Now, moving on to page 54, there is section (e), beginning on line 5, which I have no particular objection to, but I am just wondering if it is surplusage in the bill. This says when you are employing people you may, if the employment requires it, pick someone of a certain race or religion. I just wonder if that is as a matter of public policy good and necessary language.

Attorney General KENNEDY. Is that page 54?

Mr. MATHIAS. Page 54, line 5.

Attorney General KENNEDY. You mean you question whether you have to have "religion" in there? Is that correct?

Mr. MATHIAS. Well——

Attorney General KENNEDY. I do not think "religion" is necessary.

Mr. MATHIAS. In other words, why do we have to allow people—I believe counsel is suggesting that there is an answer. Perhaps we might yield to counsel.

Mr. FOLEY. Mr. Attorney General, that became a little embarrassing thing in some of the FEPC laws—because, for instance, you have religious organizations which are absolutely religious in nature, and they hire only people of their particular religion.

Attorney General KENNEDY. Yes.

Mr. FOLEY. Now, if you do not have an exemption for organizations such as that——

Attorney General KENNEDY. I see. I take it all back. I did not understand the question.

Mr. FOLEY. I think you will find most of these State statutes have this exemption.

Mr. MATHIAS. I think counsel has answered it.

Now, finally, turning to page 69, line 11, there is a provision for access to records. And on page 70, line 16, there is a description of the kind of records which would be necessary, including but not limited to a list of applicants who wish to participate, including in

chronological order, in which such applications were received, description of the manner in which persons are selected to participate in the apprenticeship or other programs, and so forth.

One of the complaints that I get in my part of the country is that the country is already groaning under a burden of paperwork which they are required to conduct on behalf of the Government for tax and other reasons.

Do you feel, No. 1, that this kind of a record is really a necessary requirement? And secondly, will there be an invasion of privacy of the businessman by giving the administrator an access to these records? And finally, is it vital to require all these records for the execution of this law should it be enacted?

Attorney General KENNEDY. May I consult with the Secretary of Labor and the Secretary of Commerce and write you a letter on both those points?

Mr. MATHIS. Certainly, I would appreciate it.

That is all I have.

Mr. BROMWELL. Mr. Attorney General, I would like to add a personal word of appreciation for the precision and frankness of your testimony. I only have two questions on detail.

I inferred from from some of the questions, both yesterday and today, that there was a concern over the trigger mechanism in 101(f), the 15 percent. It occurs to me that before that allegation could be made and subscribed, that it should be based upon data which would become evidence. And I am wondering if you would have any objection to the addition of allegations and proofs, so that the data upon which the allegation was based might become part of the record in the proceeding.

Attorney General KENNEDY. What we want to avoid, Congressman, obviously is long litigation about whether there is or is not 15 percent, so that it delays the case and delays the purpose of the whole section.

Now, anything that we could do that would not bring about that result, I would be glad to do.

Our 15 percent would be based on the records of the State, the records of the Civil Rights Commission, our own records of investigation that we have made. Also the record of the Census Bureau. In Mississippi, for instance, it would be records of the poll tax, where they list people according to race.

But I just wanted to avoid taking any step which would lead to long litigation as to whether or not there was or was not 15 percent, which would ruin the purpose of the bill.

Mr. BROMWELL. The other question relates to the two areas to which this bill speaks in which there are a substantial number of States with laws already on the books. One is accommodations and the other is employment opportunity.

In the case of the accommodations provisions, the Attorney General is required to refer these matters to the proper State authority in the first instance. And presumably the State authority will proceed unless it proves ineffective.

In the case of the employment opportunity provision, the administrator in this case first makes a determination of effectiveness of the local law and the administration of that law, and then seeks to enter a compact or agreement. These constitute two different approaches.

In your opinion is that difference significant to the operation of either section?

The CHAIRMAN. Gentlemen, it is almost 6 o'clock. I hoped that we would be finished at 6.

Attorney General KENNEDY. I will have to write you why they took that action on the FEP. As you know obviously it was considered by another committee. And I do not know what the reasoning was. I would like to also consult with the Secretary of Labor and write you as to why they took that particular position.

Mr. BROMWELL. Thank you.

The CHAIRMAN. Mr. Senner.

Mr. SENNER. Mr. Chairman, I do not have any questions to ask the Attorney General. I believe that he has covered the field rather extensively.

I want to commend you for your answers to my colleagues' questions. I think they went right to the point. You should be commended also for the contribution that you have made toward the passage and the support of the legislation.

Attorney General KENNEDY. Thank you.

The CHAIRMAN. Mr. King.

Mr. KING. Mr. Chairman—Mr. Attorney General, there certainly is no intent upon your part to grant any preferential treatment to Negroes, is there?

Attorney General KENNEDY. No.

Mr. KING. And you certainly do not want to grant them any rights that would infringe upon the rights of others.

Attorney General KENNEDY. That's correct.

Mr. KING. So if I made a statement to that effect in my district, I should not be criticized for it by the NAACP.

Attorney General KENNEDY. As far as I'm concerned, I think that is absolutely right. A group of Negroes came down about the employment practices at the Department of Justice and I stated at that time that we hire people based on their ability and on their integrity, and that nobody was going to be hired in the Department of Justice just because they were Negroes. And I think also that the President said publicly that he was against a quota system—so many Negroes in a particular area, so therefore they should have a certain perecentage of the jobs. I think it is quite a clear public statement.

Mr. KING. Now, Mr. Attorney General, on page 15, where you are talking about the demonstrations, peaceful demonstrations and so forth, do you consider that sit-ins are legal? The sit-in demonstrations?

Attorney General KENNEDY. I think it is before the Court at the present time. Some of them have been declared legal, and I think it depends on all the circumstances.

Mr. KING. How about these lie-downs, where they lie down in front of trucks, loaders and excavators and vehicles of that character? Do you consider that a peaceful demonstration?

Attorney General KENNEDY. I would think it was probably illegal, Congressman.

Mr. KING. Now, if the impounding provision that has been referred to is left in the bill would that destroy the value of the bill as far as you are concerned?

Attorney General KENNEDY. It would, Congressman.

Mr. KING. So then you would recommend its veto, I assume, if it was passed with that provision in there?

Attorney General KENNEDY. You mean if you just passed that title without any other part of the bill?

Mr. KING. No, if that were in the bill.

Attorney General KENNEDY. No, no, I certainly would not. I would be disturbed that title I was in that fashion. But I certainly would not recommend vetoing. I think that is the key to many of these problems—voting. The situation should be rectified from within. That is why I think it is so important.

Mr. KING. How about the estimates of cost? Have you taken into consideration title IV? Could you give us any estimate on that?

Attorney General KENNEDY. Title IV?

Mr. KING. Title IV of the confidential committee print. That is where the grants are being made for the training and so forth—how to handle desegregation.

Attorney General KENNEDY. Yes, we took that into consideration. I think Congressman Meader——

Mr. MEADER. I think we have some figures on that from Secretary Celebrezze.

Attorney General KENNEDY. And I think you have listed the provisions that we have taken into account.

Mr. KING. Just one more question. On this cutoff of Federal aid, in the event there were discrimination practiced in the National Guard, would you cut off all Federal aid to the National Guard of that State?

Attorney General KENNEDY. Well, Congressman, what we would attempt to do, and what should be done under those circumstances, is to try to take steps that would eliminate that. I would not expect that could be done immediately. But I would expect over a period of time steps would be taken to try to eliminate the discrimination from the National Guard. Now again I go back to the point—cutting off of aid—this provision is always described as cutting off of aid. We specifically state in the provision there are other steps that could be taken. The cutting off of aid would only be taken as a last resort, only when every other step had failed. Because that also could cause a good deal of harm and affect innocent people.

Mr. KING. Of course you could always federalize them, and that would take them out of the provision.

Attorney General KENNEDY. Yes.

Mr. KING. Thank you, Mr. Attorney General, for coming here. I appreciate it.

That is all I have, Mr. Chairman.

Mr. EDWARDS. I have no questions, Mr. Chairman. Thank you, Mr. Attorney General.

The CHAIRMAN. If there are no further questions——

The CHAIRMAN. Thank you very much, Mr. Attorney General. You are very patient.

We will adjourn until tomorrow morning at 10:30 a.m.

(Whereupon, at 6:05 p.m., the committee stood in recess until 10:30 a.m., Thursday, October 17, 1963.)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., November 29, 1963.

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The committee has requested the views of the Department of Justice on the purpose of, and need for, section 709(c) of title VII of H.R. 7152. Section 709(c) requires "every employer, employment agency, and labor organization subject to" title VII to maintain and preserve such records "relevant to the determinations of whether unalwful employment practices have been or are being committed," and to make such reports therefrom "as the Commission shall prescribe * * *."

The power of the Commission to prescribe the maintenance and preservation of records and the making of reports is expressly circumscribed by the limitation that its requirements be "reasonable, necessary, or appropriate for the enforcement of the title." There is no reason to believe that these powers, given in various versions of the bills reported by the House Education and Labor Committee, will be abused.

Businesses are, of course, required to maintain records for a variety of purposes under a number of other acts of Congress—the Fair Labor Standards Act, for example. As is the case under many of these other statutes, the record-keeping requirements of section 709(c) would greatly facilitate the effective enforcement of title VII and promote achievement of its desirable objectives. While unnecessary paperwork is obviously to be avoided and can in some instances prove burdensome, it is not to be expected that the Commission will act so as to impose any undue requirements. Records and reporting provisions substantially identical to those of title VII were included in the equal employment bills reported by the House Committee on Education and Labor in this and the previous Congress, and I have no reason to question its judgment as to the propriety or desirability of the authority given the Commission.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 2, 1963.

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the request of the committee for information concerning the cost to the United States of the various provisions of the proposed Civil Rights Act of 1963.

The preliminary cost estimates provided herein were computed on the basis of the provisions of H.R. 7152 as reported out of your committee on November 20, 1963.

For the convenience of the committee, the estimates have been broken down by title and represent the expected average annual cost over a 5-year period. More detailed estimates projected for a 5-year period as required by Public Law 84-801 will be provided to the Congress in due course.

Two of the items, representing about 10 percent of the total, are costs which will not recur after the first year. These are the special study by the Department of Labor (title VII) and the special voting census (title VIII).

Title I, voting: Department of Justice	$122,700
Title II, public accommodations: Department of Justice	469,460
Title III, public facilities: Department of Justice	331,760
Title IV, school desegregation:	
Department of Health, Education, and Welfare	10,095,000
Department of Justice	699,870
Total, title IV	10,794,870
Title V, Civil Rights Commission: Civil Rights Commission	1,425,000
Title VI, nondiscrimination in federally assisted programs: Department of Justice	66,350
Title VII, equal employment opportunity:	
Equal Employment Opportunity Commission	5,760,000
Department of Labor (special study)	75,000
Total	5,835,000
Title VIII, special voting census: Department of Commerce	1,800,000
Estimated annual cost	20,845,140

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 2, 1963.

Congressman EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: This is in response to your request for a list of programs and activities which involve Federal financial assistance within the scope of title VI of the proposed civil rights bill, H.R. 7152.

For the reasons outlined below, it has been found to be impossible to compile any list which is accurately responsive to your request or satisfactorily representative of the amounts of Federal financial assistance which potentially could be affected by the provisions of title VI. The list attached should not, therefore, be taken at face value or used without an understanding of its limitations.

Title VI, as set forth in Committee Print No. 2, dated October 30, 1963, provides in part:

"SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

"SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity by way of grant, contract, or loan, shall take action to effectuate the provisions of section 601 with respect to such program or activity. * * *"

Title VI would apply to programs and activities which receive Federal financial assistance, by way of grant, contract, or loan. I attach a list of appropriations, revolving funds, and trust funds, part or all of which may involve such Federal financial assistance. The list is keyed to line items in the 1964 budget, and is based on financial data furnished by the Bureau of the Budget. The following, however, were omitted: (1) New programs which, although listed in the budget, are not yet authorized and are the subject of proposed legislation and (2) programs which were in liquidation after fiscal year 1962. A program description for each item can be found in the appendix to the 1964 budget on the page indicated after the program title on the attached list.

The dollar figures in the table are the preliminary actual expenditures for the fiscal year 1963 as reported by the Treasury Department. In the case of revolving and trust funds, the expenditures shown are on a net basis except in the case of two trust funds indicated by footnotes in the attached table, which are shown on a gross expenditure basis in the Budget and Treasury reports. Minus figures indicate net revenues.

The following comments and observations are applicable to the attached table.

1. Activities wholly carried out by the United States with Federal funds, such as river and harbor improvements and other public works, defense installations, veterans' hospitals, mail service, etc. are not included in the list. Such activities, being wholly owned by, and operated by or for, the United States, cannot fairly be described as receiving Federal "assistance." While they may result in general economic benefit to neighboring communities, such benefit is not considered to be financial assistance to a program or activity within the meaning of title VI.[1]

For similar reasons, ordinary Government procurement is not considered to be subject to title VI. All such direct activities of the Federal Government are, of course, subject to the constitutional requirement of nondiscrimination embodied in the fifth amendment; in addition, contracting related to them is subject to the nondiscrimination requirements of Executive Order 10925 and would be subject to the authority conferred by section 711(b) of H.R. 7152.

2. A number of programs administered by Federal agencies involve direct payments to individuals possessing a certain status. Some such programs may involve compensation for services rendered, or for injuries sustained, such as military retirement pay and veterans' compensation for service-connected disability, and perhaps should not be described as assistance programs; others, such as veterans' pensions and old-age, survivors, and disability benefits under title II of the Social Security Act, might be considered to involve financial assistance by way of grant. But to the extent that there is financial assistance in either type of program, the assistance is to an individual and not to a "program or activity" as required by title VI. In any event, title VI would not substantially affect such benefits, since these payments are presently made on a nondiscriminatory basis, and since discrimination in connection with them is precluded by the fifth amendment to the Constitution, even in the relatively few instances in which they are not wholly federally administered. Accordingly, such programs are omitted from the list. For similar reasons, programs involving direct Federal furnishing of services; such as medical care at federally owned hospitals, are omitted.

3. Programs of assistance to foreign countries, to persons abroad, and to unincorporated territories and possessions of the United States, are omitted, since the application of title VI is limited to persons in the United States. Programs of assistance to Indians are also omitted. Indians have a special status under the Constitution and treaties. Nothing in title VI is intended to change that status or to preclude special assistance to Indians. Programs which involve Federal payments to regular school districts which provide education to Indians as well as non-Indians have, however, been included since such programs can be regarded as a form of assistance to the school district.

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[1] Reclamation projects have, however, been included because they may include construction under contract of some facilities which will be operated and ultimately owned by non-Federal entities, and may to that extent be considered to involve a form of financial assistance to such entities.

4. The dollar amounts shown do not in each case afford a reliable indication of the magnitude of the assisted program or activity. In a number of cases, the total Federal expenditures for a given line item in the budget have been shown even though only a small portion or aspect of the program covered by that line item might involve financial assistance within the scope of title VI.[2] On the other hand, certain very large items which may involve relatively very small amounts of Federal financial assistance, have been omitted to avoid undue distortion. Examples include: AEC, a small part of whose expenditures may have been spent on assistance payments to States, localities, and private entities; research and development activities related to national defense and other direct governmental functions, a small part of which involve grants, fellowships, and other assistance payments; and procurement, some part of which may possibly be considered to involve special assistance to contractors. Similarly, while programs involving donation of commodities, in kind, would appear to be within the scope of title VI, and such programs have been included in the attached list where clearly identifiable, no attempt has been made to identify, or place a dollar figure on, all programs involving donation of property, or disposition at less than fair value.

5. It should not be assumed that each program shown on the attached list will be significantly affected by the enactment of title VI. Title VI expresses a general, across-the-board Government policy, which has potential impact on a great number and variety of programs. The attached list attempts to identify those programs which might potentially be affected, although some may have been overlooked. In fact, however, title VI is expected to have little practical impact on many of the programs listed, for the reason that they are now being administered in a manner which conforms with the policy declared by title VI. Indeed, explicit nondiscrimination policies have been adopted by executive action in recent years in many areas, including housing, airports, and employment on federally assisted construction, while other programs either do not present practical possibilities for discrimination, or have long been administered in ways which preclude discrimination.

The impact of title VI is further limited by the fact that it relates only to participation in, receipt of benefits of, or discrimination under, a federally assisted program. As to each assisted program or activity, therefore, title VI will require an identification of those persons whom Congress regarded as participants and beneficiaries, and in respect of whom the policy declared by title VI would apply. For example, the purpose of benefit payments to producers of agricultural commodities, under 7 U.S.C. 608, is to "establish and maintain * * * orderly marketing conditions for agricultural commodities in interstate commerce" (7 U.S.C. 602). The act is not concerned with farm employment. As applied to this Federal assistance program, title VI would preclude discrimination in connection with the eligibility of farmers to obtain benefit payments, but it would not affect the employment policies of a farmer receiving such payments.

The effect of title VI, on most of the programs shown on the attached list, will be to provide statutory support for action already being taken to preclude discrimination, to make certain that such action is continued in future years as a permanent part of our national policy, and to require each department and agency administering a program which may involve Federal financial assistance to review its administration to make sure that adequate action has been taken to preclude discrimination and to take any action which may be shown to be necessary by such review.

In addition, title VI will override those provisions of existing Federal law which contemplate financial assistance to "separate but equal" facilities. Assistance to such facilities appears to be contemplated under the Hill-Burton Act (42 U.S.C. 291e(f)—hospital construction), the second Morrill Act (7 U.S.C. 323—land-grant colleges) and Public Law 815 (20 U.S.C. 636(b)(F)—school construction). The U.S. Court of Appeals of the Fourth Circuit has recently held the "separate but equal" provision of the Hill-Burton Act unconstitutional. *Simkins v. Moses Cone Memorial Hospital*, decided November 1, 1963. Title VI would override all such "separate but equal" provisions without the need for further litigation, and would give, to the Federal agencies administering laws

[2] For example, the item listed as "forest protection and utilization" under the Department of Agriculture is shown at its total 1963 expenditure of $197,242,562 although only a small amount of that total is to be spent for State and local grants which come within the scope of title VI. Costs of administration have also been included except where they appear as a separate line item in the budget.

which contain such provisions, a clear directive to take action to effectuate the provisions of title VI.

I regret that it is impossible to supply more meaningful dollar figures with respect to programs of assistance potentially affected by title VI. As indicated, the amounts set out in the accompanying chart are almost all total expenditure figures, rather than the considerably smaller portions thereof which could be affected by title VI. Of course, most of the programs of Federal assistance included on the list are already administered on a nondiscriminatory basis, and, thus, though within the literal scope of title VI and included on the list, would not be affected by enactment of the title. I particularly stress the regrettable, though unavoidable, difficulties inherent in the attached list in order to forestall any misunderstanding or distortion of its significance or meaning by either proponents or opponents of the legislation.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Programs which may involve Federal financial assistance

	1963 expenditures
Executive Office of the President:	
Office of Emergency Planning: State and local preparedness (p. 52)	0
Funds appropriated to the President:	
Disaster relief: disaster relief (p. 59)	$30,802,990
Expansion of defense production: Revolving fund, Defense Production Act (p. 60)	—56,513,274
Public works acceleration: Public works acceleration (p. 86)	61,843,808
Transitional grants to Alaska: Transitional grants to Alaska (p. 87)	3,110,295
Department of Agriculture:	
Cooperative State Experiment Station Service: Payments and expenses (p. 95)	37,992,460
Extension Service: Cooperative extension work, payments and expenses (p. 96)	74,687,584
Soil Conservation Service:	
Watershed protection (p. 100)	53,092,516
Flood prevention (p. 103)	26,488,410
Great Plains conservation program (p. 104)	9,747,075
Resource conservation and development (p. 105)	0
Agricultural Marketing Service:	
Payments to States and possessions (p. 113)	1,432,763
Special milk program (p. 113)	95,369,634
School lunch program (p. 114)	169,597,189
Removal of surplus agricultural commodities (p. 116)	131,805,115
Agricultural Stabilization and Conservation Service:	
Expenses, Agricultural Stabilization and Conservation Service (p. 122)	87,415,517
Sugar Act program (p. 125)	76,929,888
Agricultural conservation program (p. 125)	211,194,214
Land-use adjustment program (p. 127)	2,000,000
Emergency conservation measures (p. 127)	2,701,427
Conservation reserve program (p. 127)	304,342,305
Commodity Credit Corporation:	
Price support and related programs and special milk (p. 132)	3,486,350,042
National Wool Act (p. 137)	69,164,861
Rural Electrification Administration: Loan authorizations (p. 148)	331,656,082
Farmers Home Administration:	
Rural housing grants and loans (p. 151)	184,203,524
Rural renewal (p. 153)	0
Direct loan account (p. 153)	58,948,965
Emergency credit revolving fund (p. 156)	7,888,613
Rural housing for the elderly revolving fund (p. 155)	0

Programs which may involve Federal financial assistance—Continued

	1963 Expenditures
Department of Agriculture—Continued	
Forest Service:	
Forest protection and utilization (p. 170)	$197,242,562
Assistance to States for tree planting (p. 176)	1,203,697
Payments to Minnesota (Cook, Lake, and St. Louis Counties) from the national forests fund (p. 177)	125,366
Payments to counties, national grasslands (p. 177)	393,674
Payments to school funds, Arizona and New Mexico, act of June 10, 1910 (p. 177)	80,462
Payments to States, national forests fund (p. 177)	27,235,140
Department of Commerce:	
Area Redevelopment Administration:	
Grants for public facilities (p. 188)	476,848
Area redevelopment fund (p. 188)	—499,532
Office of Trade Adjustment: Trade adjustment assistance (p. 202)	2,820
Maritime Administration:	
Ship construction (p. 223)	107,483,152
Operating-differential subsidies (p. 224)	220,676,686
Maritime training (p. 227)	3,297,777
State marine schools (p. 227)	1,420,724
Bureau of Public Roads:	
Forest highways (p. 237)	38,525,999
Public lands highways (p. 239)	2,128,990
Control of outdoor advertising (p. 239)	0
Highway trust fund (p. 241)	[1] 3,017,268,879
Department of Defense:	
Military personnel:	
National Guard personnel, Army (p. 253)	212,109,751
National Guard personnel, Air Force (p. 254)	45,366,036
Operation and maintenance:	
Operation and maintenance, Army National Guard (p. 267)	174,059,283
Operation and maintenance, Air National Guard (p. 268)	193,258,395
National Board for Promotion of Rifle Practice, Army (p. 269)	650,368
Military construction:	
Military construction, Army National Guard (p. 306)	18,383,216
Military construction, Air National Guard (p. 306)	21,912,946
Civil defense:	
Operation and maintenance, civil defense (p. 313)	34,457,221
Research and development, shelter, and construction, civil defense (p. 314)	11,810,129
Civil functions: Payments to States, Flood Control Act of 1954 (p. 378)	1,613,757
Department of Health, Education, and Welfare:	
Office of Education:	
Promotion and further development of vocational education (p. 402)	34,330,192
Further endowment of colleges of agriculture and mechanic arts (p. 402)	11,950,000
Grants for library services (p. 402)	7,256,890
Payments to school districts (p. 402)	276,910,035
Assistance for school construction (p. 403)	66,241,942
Defense educational activities (p. 404)	198,335,518
Expansion of teaching in education of the mentally retarded (p. 406)	959,631
Expansion of teaching in the education of the deaf (p. 406)	1,382,635
Cooperative research (p. 406)	5,015,385
Foreign language training and area studies (p. 407)	0
Colleges of agriculture and mechanic arts (p. 408)	2,550,000
Promotion of vocational education, act of Feb. 23, 1917 (p. 409)	7,144,113

[1] This amount is on a checks-issued (gross) basis. [2] Receipts (collections deposited) totaled $3,292,965,983 in fiscal year 1963.

Programs which may involve Federal financial assistance—Continued

	1963 Expenditures
Department of Health, Education, and Welfare—Continued	
Office of Vocational Rehabilitation:	
Grants to States (p. 409)	$70,651,560
Research and training (p. 410)	24,145,307
Public Health Service:	
Accident prevention (p. 415)	3,679,047
Chronic diseases and health of the aged (p. 416)	16,303,114
Communicable disease activities (p. 417)	10,749,235
Community health practice and research (p. 419)	23,946,767
Control of tuberculosis (p. 420)	6,813,635
Control of venereal diseases (p. 420)	7,843,535
Dental services and resources (p. 421)	2,603,482
Nursing services and resources (p. 422)	8,373,620
Hospital construction activities (p. 423)	187,432,190
George Washington University Hospital construction (p. 424)	0
Aid to medical education (p. 424)	0
Environmental health sciences (p. 425)	0
Air pollution (p. 425)	10,100,876
Milk, food, interstate and community sanitation (p. 426)	8,723,615
Occupational health (p. 427)	4,059,384
Radiological health (p. 428)	13,466,288
Water supply and water pollution control (p. 429)	22,554,121
Grants for waste treatment works construction (p. 430)	51,738,090
National Institutes of Health (pp. 435–444)	723,597,285
Social Security Administration:	
Grants to States for public assistance (p. 460)	2,723,677,540
Training of public welfare personnel (p. 463)	0
Assistance for repatriated U.S. nationals (p 464)	412,044
Grants for maternal and child welfare (p. 465)	76,057,662
Cooperative research or demonstration projects in social security (p. 468)	952,654
Assistance to refugees in the United States (p. 469)	52,902,237
American Printing House for the Blind: Education of the blind (p. 472)	718,707
Gallaudet College: Salaries and expenses (p. 474)	1,458,615
Howard University:	
Salaries and expenses (p. 475)	8,362,261
Construction (p. 476)	2,687,024
Office of the Secretary:	
Juvenile delinquency and youth offenses (p. 480)	4,473,623
Educational television facilities	1,818
Department of the Interior:	
Bureau of Land Management:	
Payments to Oklahoma (royalties) (p. 491)	6,214
Payments to Coos and Douglas Counties, Oreg., from receipts, Coos Bay Wagon Road grant lands (p. 491)	697,449
Payments to counties, Oregon and California grant lands (p. 491)	15,400,136
Payments to States (grazing fees) (p. 492)	917
Payments to States (proceeds of sales) (p. 492)	249,328
Payments to States from grazing receipts, etc., public lands outside grazing districts (p. 492)	183,632
Payments to States from grazing receipts, etc., public lands within grazing districts (p. 492)	200,446
Payments to States from grazing receipts, etc., public lands within grazing districts, miscellaneous (p. 492)	3,902
Payments to States from receipts under Mineral Leasing Act (p. 492)	47,147,555
Payments to counties, national grasslands (p. 492)	92,255

Programs which may involve Federal financial assistance—Continued

	1963 Expenditures
Department of the Interior—Continued	
Bureau of Indian Affairs:	
Education and welfare services (p. 493)	$77,723,737
Menominee educational grants (p. 499)	396,000
National Park Service: Payment for tax losses on land acquired for Grand Teton National Park (p. 511)	27,287
Bureau of Mines: Drainage of anthracite mines (p. 524)	39,801
Office of Minerals Exploration:	
Salaries and expenses (p. 528)	569,202
Lead and zinc stabilization programs (p. 528)	1,457,023
Bureau of Commercial Fisheries:	
Construction of fishing vessels (p. 533)	543,459
Payment to Alaska from Pribilof Islands fund (p. 536)	702,852
Fisheries loan fund (p. 536)	—1,387,010
Bureau of Sport Fisheries and Wildlife:	
Federal aid in fish restoration and management (p. 542)	5,768,736
Federal aid in wildlife restoration (p. 542)	15,530,052
Payments to counties, national grasslands (p. 543)	—1,970
Payments to counties from receipts under Migratory Bird Conservation Act (p. 543)	582,467
Bureau of Reclamation:	
Construction and rehabilitation (p. 546)	168,185,561
Loan program (p. 551)	14,486,977
Payments to States of Arizona and Nevada (p. 556)	600,000
Upper Colorado River storage project (p. 557)	106,298,150
Department of Labor:	
Office of Manpower, Automation, and Training:	
Manpower development and training activities (p. 600)	51,783,662
Area redevelopment activities: Salaries and expenses (p. 601)	6,676,622
Bureau of Employment Security:	
Unemployment compensation for Federal employees and ex-servicemen (p. 606)	152,858,563
Salaries and expenses, Mexican farm labor program (p. 607)	1,814,958
Farm labor supply revolving fund (p. 608)	1,179,036
Unemployment trust fund (p. 946)	[2] 3,815,629,499
Office of the Secretary: Trade adjustment activities (p. 619)	640
Department of State:	
Educational exchange:	
Mutual educational and cultural exchange activities (p. 649)	26,207,202
Center for cultural and technical interchange between East and West (p. 651)	7,344,731
Federal Aviation Agency: Grants-in-aid for airports (p. 700)	51,493,441
General Services Administration:	
Real property activities: Hospital facilities in the District of Columbia (p. 714)	74,877
Housing and Home Finance Agency:	
Office of the Administrator:	
Urban planning grants (p. 742)	12,388,967
Open-space land grants (p. 743)	265,014
Low-income housing demonstration programs (p. 744)	145,976
College housing loans (p. 745)	283,573,515
Public facility loans (p. 747)	30,047,779
Public works planning (p. 749)	5,864,028
Urban renewal fund (p. 752)	173,208,174
Housing for the elderly funds (p. 757)	18,856,257
Federal National Mortgage Association:	
Special assistance functions fund (p. 761)	—262,295,979
Federal National Mortgage Association secondary market operations (p. 956)	—720,621,211
Public Housing Administration: Low-rent public housing program fund (p. 773)	178,867,436

[2] This amount is on a check-issued (gross) basis. Receipts (collections deposited) totaled $4,256,052,867 in fiscal year 1963.

Programs which may involve Federal financial assistance—Continued

	1963 Expenditures
Veterans' Administration: Direct loans to veterans and reserves (p. 803)	—$86,178,301
Civil Aeronautics Board: Payments to air carriers (p. 818)	81,856,762
Farm Credit Administration:	
Short-term credit investment fund (p. 835)	13,310,000
Banks for cooperatives investment fund (p. 836)	—11,979,500
Federal Home Loan Bank Board: Federal Home Loan Bank Board revolving fund (p. 840)	—119,413
Federal Power Commission: Payments to States under Federal Power Act (p. 850)	58,453
National Capital Housing Authority: National Capital Housing Authority trust fund (p. 968)	—2,354,674
National Capital Planning Commission: Land acquisition, National Capital park, parkway, and playground system (p. 860)	1,295,588
National Science Foundation: Salaries and expenses (p. 864)	206,859,160
Small Business Administration:	
Trade adjustment loan assistance (p. 875)	0
Revolving fund (p. 876)	134,320,156
District of Columbia:	
Federal payment to District of Columbia (p. 913)	32,899,000
Loans to District of Columbia for capital outlay, general fund (p. 913)	0
Loans to District of Columbia for capital outlay, highway fund (p. 914)	7,500,000
Loans to District of Columbia for capital outlay, water fund (p. 914)	850,000
Loans to District of Columbia for capital outlay, sanitary sewage works fund (p. 914)	2,400,000
Federal contributions and loans to the metropolitan area sanitary sewage works fund (p. 915)	14,200,000
Repayable advances to District of Columbia general fund (p. 915)	7,000,000
Advances to stadium sinking fund, Armory Board (p. 915)	415,800

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 2, 1963.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: You have requested comments on the preemption provisions contained in title II and title VII of H.R. 7152 as approved for reporting by your committee.

Section 205(b) of title II and section 708(a) of title VII have basically the same purpose. Both sections express the intent of Congress that the provisions of titles II and VII shall not preempt any provision of State law dealing with similar subject matter. Both permit the utilization of existing and future civil, criminal, and administrative remedies to attack discriminatory practices which are prohibited by such other laws. In addition, the title II provision is designed expressly to safeguard against the imposition of Federal sanctions other than those contemplated by title II itself. The design of title VII, with its own administrative structure, would seem to make this same principle clear with respect to the rights therein created.

Title VII does contain one provision not found in title II. Section 708(b) provides that the Equal Employment Opportunity Commission, by written agreement, shall cede jurisdiction of certain cases to State and local agencies which have power to eliminate discrimination in employment prohibited by title VII. This provision seems well suited to title VII but would appear inappropriate for inclusion in title II.

Title VII establishes a commission to deal with employment discrimination. Charges of employment discrimination often involve such questions as seniority, and the like. As a new agency, the Commission might well find its caseload

heavy; this could prevent the expeditious disposition of complaints. Section 708(b), by providing for the cession of jurisdiction to effective State and local agencies, would permit the Commission to concentrate on cases which cannot effectively be handled by such agencies.

Equally important is the fact that the cession provision of title VII will permit disputes over employment discrimination to be settled at the local level. Where a State or local antidiscrimination agency is effective, it appears desirable to entrust it with dealing with problems in this area rather than to involve a Federal agency.

Title II, on the other hand, creates no administrative agency to deal with discrimination in places of public accommodation. Where discrimination is charged, redress is sought by bringing a civil action in Federal district court. Such suits may be brought by the Attorney General, in certain limited instances, and by private individuals. The utilization of the services of local agencies is amply assured by the provisions of sections 204(c) and 204(d). In short, a provision contemplating the relinquishment of enforcement jurisdiction by one administrative agency to another does not appear logically or practically appropriate in title II.

Sincerely,

NICHOLAS DEB. KATZENBACH, *Deputy Attorney General.*

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88TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 914

2036-1

CIVIL RIGHTS ACT OF 1963

NOVEMBER 20, 1963.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 7152]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7152) to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in education, to establish a Community Relations Service, to extend for 4 years the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Amendment No. 1: Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as "The Civil Rights Act of 1963."

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974-74e; 74 Stat. 88).

"(3) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory or the District of Columbia where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election."

(c) Add the following subsection "(f)" and designate the present subsection "(f)" as subsection "(g)":

"(f) When used in subsections (a) or (c) of this section, the words 'Federal election' shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives."

(d) Add the following subsection "(h)":

"(h) In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. A copy of the request shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunch room, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises, of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, regulation, custom, or usage; or (2) is required, fostered, or encouraged by action of a State or a political subdivision thereof.

(e) The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule or order, of a State or any agency or political subdivision thereof.

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202, or (d) incite or aid or abet any person to do any of the foregoing.

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) by the person aggrieved, or (2) by the Attorney General for or in the name of the United States if he satisfies himself that the purposes of this title will be materially furthered by the filing of an action.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203 in a place where State or local laws or

regulations forbid the act or practice involved, the Attorney General shall notify the appropriate State or local officials and, upon request, afford them a reasonable time to act under such State or local laws or regulations before he institutes an action.

(d) In the case of any complaint received by the Attorney General alleging a violation or threatened violation of section 203, the Attorney General, before instituting an action, may utilize the services of any Federal, State, or local agency or instrumentality which may be available to attempt to secure compliance with the provisions of this title by voluntary procedures.

(e) Compliance with the foregoing provisions of subsection (c) shall not be required if the Attorney General shall file with the court a certificate that the delay consequent upon compliance with such provisions in the particular case would adversely affect the interests of the United States, or that in the particular case compliance with such provisions would prove ineffective.

SEC. 205. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights hereby created, but nothing in this title shall preclude any individual or any State or local agency from asserting any right created by any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(c) Proceedings for contempt arising under the provisions of this title shall be be subject to the provisions of section 151 of the Civil Rights Act of 1957 (71 Stat. 638).

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied access to or full and complete utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

SEC. 302. Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action. In such an action the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 303. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 304. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

SURVEY AND REPORT OF EDUCATIONAL OPPORTUNITIES

SEC. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

TECHNICAL ASSISTANCE

SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

TRAINING INSTITUTES

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institute.

GRANTS

SEC. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

PAYMENTS

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

SUITS BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General receives a complaint—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection by the laws by reason of the failure of a school board to achieve desegregation, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin,

and the Attorney General certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the public policy of the United States favoring the orderly achievement of desegregation in public education, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis.

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or in any facility covered by this title.

TITLE V—COMMISSION ON CIVIL RIGHTS

SEC. 501. Section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a; 71 Stat. 634) is amended to read as follows:

"RULES OF PROCEDURE OF THE COMMISSION HEARINGS

"SEC. 102. (a) The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. In the event the Commission determines that such evidence or testimony shall be given at a public session, it shall afford such person an opportunity voluntarily to appear as a witness and receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process."

SEC. 502. Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 634) is amended to read as follows:

"SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $75 per day for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808)."

SEC. 503. Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b); 71 Stat. 634) is amended to read as follows:

"(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166)."

SEC. 504. (a) Section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c; 71 Stat. 635), as amended, is further amended to read as follows:

"DUTIES OF THE COMMISSION

"SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;

"(4) serve as a national clearinghouse for information in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice; and

"(5) investigate allegiations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a report of its activities, findings, and recommendations not later than January 31 of each year."

(b) Section 104(c) of the Civil Rights Act of 1957 is repealed.

SEC. 505. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d)(a); 71 Stat. 636) is amended by striking out in the last sentence thereof "$50 per diem" and inserting in lieu thereof of "$75 per diem."

SEC. 506. Section 105(g) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(g); 71 Stat. 636) is amended to read as follows:

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

SEC. 507. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended by section 401 of the Civil Rights Act of 1960 (42 U.S.C. 1975d(h); 74 Stat. 89), is further amended by adding a new subsection at the end to read as follows:

"(i) The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act."

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. Notwithstanding any inconsistent provision of any other law, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, or loan, shall take action to effectuate the provisions of section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding of a failure to comply with such requirement, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

FINDINGS AND DECLARATION OF POLICY

SEC. 701. (a) The Congress hereby declares that the opportunity for employment without discrimination of the types described in sections 704 and 705 is a right of all persons within the jurisdiction of the United States, and that it is the national policy to protect the right of the individual to be free from such discrimination.

(b) The Congress further declares that the succeeding provisions of this title are necessary for the following purposes:

(1) To remove obstructions to the free flow of commerce among the States and with foreign nations.

(2) To insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution of the United States.

DEFINITIONS

SEC. 702. For the purposes of this title—

(a) the term "person" includes one or more individuals, labor union, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: Provided, That during the first year after the effective date prescribed in subsection (a) of section 710, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 719, (B) fifty or more during the second year after such date, or (C) twenty-five or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2)

as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 703. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN

SEC. 704. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, or national origin;

(2) To limit, segregate, or classify its membership in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training programs to discriminate against any individual because of his race, color, religion, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to hire and employ employees of a particular religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 705. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor

organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion when religion is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 706. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) Each member of the Commission shall receive a salary of $20,000 a year, except that the Chairman shall receive a salary of $20,500.

(f) The principal office of the Commission shall be in the District of Columbia, but it may meet or exercise any or all of its powers at any other place. The Commission may establish such regional offices as it deems necessary, and shall establish at least one such office in each of the major geographical areas of the United States, including its territories and possessions.

(g) The Commission shall have power—

(1) to cooperate with and utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of any employer, whose employees or some of them refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or other remedial action;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to interested governmental and nongovernmental agencies.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 707. (a) Whenever it is charged in writing under oath by or on behalf of a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge. If two or more members of the Commission shall determine, after such investigation, that reasonable cause exists for crediting the charge, the Commission shall endeavor to eliminate any such unlawful employment practice by informal methods of conference, conciliation, and persuasion and, if appropriate, to obtain from the respondent a written agreement describing particular practices which the respondent agrees to refrain from committing. Nothing said or done during and as a part of such endeavors may be used as evidence in a subsequent proceeding.

(b) If the Commission has failed to effect the elimination of an unlawful employment practice and to obtain voluntary compliance with this title, or in advance thereof if circumstances warrant, the Commission, if it determines there is reasonable cause to believe the respondent has engaged in, or is engaging in, an unlawful employment practice, shall, within ninety days, bring a civil action to prevent the respondent from engaging in such unlawful employment practice, except that the Commission shall be relieved of any obligation to bring a civil action in any case in which the Commission has, by affirmative vote, determined that the bringing of a civil action would not serve the public interest.

(c) If the Commission has failed or declined to bring a civil action within the time required under subsection (b), the person claiming to be aggrieved may, if one member of the Commission gives permission in writing, bring a civil action to obtain relief as provided in subsection (e).

(d) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such actions may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed or in the judicial district in which the respondent has his principal office. No such civil action shall be based on an unlawful employment practice occurring more than six months prior to the filing of the charge with the Commission and the giving of notice thereof to the respondent, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event a period of military service shall not be included in computing the six-month period.

(e) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint the court may enjoin the respondent from engaging in such unlawful employment practice, and shall order the respondent to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as may be appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for cause.

(f) In any case in which the pleadings present issues of fact, the court may appoint a master and the order of reference may require the master to submit with his report a recommended order. The master shall be compensated by the United States at a rate to be fixed by the court, and shall be reimbursed by the United States for necessary expenses incurred in performing his duties under this section. Any court before which a proceeding is brought under this section shall advance such proceeding on the docket and expedite its disposition.

(g) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other

purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

(h) In any action or proceeding under this title the Commission shall be liable for costs the same as a private person.

EFFECT ON STATE LAWS

SEC. 708. (a) Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

(b) Where there is a State or local agency which has effective power to eliminate and prohibit discrimination in employment in cases covered by this title, and the Commission determines the agency is effectively exercising such power, the Commission shall seek written agreements with the State or local agency under which the Commission shall refrain from bringing a civil action in any cases or class of cases referred to in such agreement. No person may bring a civil action under section 707(c) in any cases or class of cases referred to in such agreement. The Commission shall rescind any such agreement when it determines such agency no longer has such power, or is no longer effectively exercising such power.

INVESTIGATIONS, INSPECTIONS, RECORDS

SEC. 709. (a) In connection with any investigation of a charge filed under section 707, the Commission or its designated representative may gather data regarding the practices of any person and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as may be appropriate to determine whether the respondent has committed or is committing an unlawful employment practice, or which may aid in the enforcement of this title.

(b) With the consent and cooperation of State and local agencies charged with the administration of State fair employment practices laws, the Commission may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered to assist the Commission in carrying out this title.

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship it may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment service, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

INVESTIGATORY POWERS

SEC. 710. (a) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission, except that the provisions of section 307 of the Federal Power Commission Act shall apply with respect to

grants of immunity, and except that the attendance of a witness may not be required outside the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission.

EMPLOYMENT PRACTICES OF GOVERNMENTAL AGENCIES AND OF CONTRACTORS WITH THE GOVERNMENT

SEC. 711. (a) The President is authorized and directed to take such action as may be necessary to provide protections within the Federal Establishment to insure equal employment opportunities for Federal employees in accordance with the policies of this title.

(b) The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States.

NOTICES TO BE POSTED

SEC. 712. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts of this title and such other relevant information which the Commission deems appropriate to effectuate the purposes of this title.

(b) A willful violation of this section shall be punishable by a fine of not less than $100 or more than $500 for each separate offense.

VETERANS' PREFERENCE

SEC. 713. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 714. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he published and filed such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 715. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

APPROPRIATIONS AUTHORIZED

SEC. 716. There is hereby authorized to be appropriated not to exceed $2,500,000 for the administration of this title by the Commission during the

first year after its enactment, and not to exceed $10,000,000 for such purpose during the second year after such date.

SEPARABILITY CLAUSE

SEC. 717. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

SPECIAL STUDY BY SECRETARY OF LABOR

SEC. 718. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1964, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

EFFECTIVE DATE

SEC. 719. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 704, 705, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and empolyment agencies who will be subject to this title.

TITLE VIII

REGISTRATION AND VOTING STATISTICS

SEC. 801. The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, include a count of persons of voting age by race, color, and national origin, and a determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe.

TITLE IX—PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

TITLE X—MISCELLANEOUS

SEC. 1001. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

SEC. 1002. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 1003. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.

Amendment No. 2: Amend the title so as to read:

A bill to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

PURPOSE AND CONTENT OF THE LEGISLATION

The bill, as amended, is designed primarily to protect and provide more effective means to enforce the civil rights of persons within the jurisdiction of the United States. In furtherance of these objectives the bill: (1) provides for the appointment of a three-judge district court in voting suits and for the expeditious determination of such suits, and also provides against the discriminatory use of literacy tests in Federal elections; (2) prohibits discrimination in enumerated public establishments; (3) authorizes the Attorney General to initiate suits to desegregate public facilities, other than public schools, and to intervene in suits charging deprivation of equal protection of the laws; (4) authorizes the Attorney General to initiate suits to desegregate public schools; (5) makes the Civil Rights Commission a permanent agency; (6) prohibits discrimination in any Federal financial assistance program; (7) establishes a Federal Equal Employment Commission designed to eliminate discriminatory employment practices by business, labor unions, or employment agencies; (8) provides for the compilation of registration and voting statistics by race, color, and national origin; (9) makes a remand of a civil rights case from a Federal court back to a State court reviewable on appeal.

HISTORY OF THE LEGISLATION

Early in the 88th Congress a substantial number of broad civil rights bills were introduced by members of both political parties.

On February 28, 1963, the President of the United States transmitted to the Congress a message of recommendations pertaining to civil rights (H. Doc. 75, 88th Cong., 1st sess.). Subsequently, on June 19, 1963, the President of the United States transmitted to the Congress a second message containing recommendations pertaining to civil rights (H. Doc. 124, 88th Cong., 1st sess.).

A judiciary subcommittee conducted hearings on 172 bills which had been referred to it. These proposals related to almost every aspect and facet of civil rights including such topics as voting; public accommodations; school desegregation; prohibition of discrimination in Federal financial assistance programs; equal protection of laws; antilynching; fair employment practices; the Civil Rights Commission; establishment of a Community Relations Service; voting and registration statistics according to race, color, and national origin; and authorization for the Attorney General to institute civil actions to protect and enforce civil rights.

Hearings were held on May 8, 9, 15, 16, 23, 24, 28; June 13, 26, 27; July 10, 11, 12, 17, 18, 19, 24, 25, 26, 31; and August 1, 2, 1963 (civil rights hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 88th Cong., 1st sess., serial No. 4).

During the course of these hearings, the testimony related to all the subjects of the legislative proposals. The witnesses included the congressional authors of the proposals; other Members of both Houses of Congress; the Attorney General; the Secretaries of Labor and of Health, Education, and Welfare; representatives of the Civil Rights Commission; and of the President's Committee on Equal Employment Opportunity, State and local officials, private citizens, as well as representatives of various organizations specifically concerned with this legislation. The subcommittee afforded to all who were interested a reasonable opportunity to present their views on the proposals. Those who did not appear personally were given an opportunity to submit any relevant matter for the record.

Upon conclusion of the hearings, the subcommittee met in executive session a total of 17 days to consider the legislation. Thereafter the subcommittee struck out of H.R. 7152, as amended, all after the enacting clause and inserted in lieu thereof an amendment in the nature of a substitute. The amended version was recommended to the full Judiciary Committee.

The substitute version of the legislation before the full Judiciary Committee contained 11 titles. Briefly, these were:

(I) Voting rights;

(II) Injunctive relief against discrimination in public accommodations;

(III) Authorization to the Attorney General to institute civil proceedings to protect against the deprivation of rights;

(IV) Desegregation of public education and other public facilities;

(V) Establishment of a Community Relations Service;

(VI) Permanent extension of the Civil Rights Commission;

(VII) Nondiscrimination in federally assisted programs;

(VIII) Creation of a Federal Equal Employment Opportunity Commission;

(IX) Provision for the compilation of registration and voting statistics according to race, color, and national origin;

(X) Provision for review of an order remanding a civil rights case from a Federal court back to a State court; and

(XI) A general separability provision and a general appropriations authorization.

The full Judiciary Committee in its deliberation and consideration of the bill, H.R. 7152, adopted an amendment in the nature of a substitute. This substitute retained amended titles on voting rights; public accommodations; authorization to the Attorney General to intervene in or initiate certain civil rights suits; desegregation of public education; permanent extension of the Civil Rights Commission; nondiscrimination in federally assisted programs; creation of a Federal Equal Employment Opportunity Commission; compilation of registration and voting statistics according to race, color, and national origin; a separability provision; and general appropriation authorization. The substitute deleted the title establishing a Community

Relations Service and retained intact the title providing for review of an order remanding a civil rights case from a Federal court back to a State court.

General Statement

In various regions of the country there is discrimination against some minority groups. Most glaring, however, is the discrimination against Negroes which exists throughout our Nation. Today, more than 100 years after their formal emancipation, Negroes, who make up over 10 percent of our population, are by virtue of one or another type of discrimination not accorded the rights, privileges, and opportunities which are considered to be, and must be, the birthright of all citizens.

Considerable progress has been made in eliminating discrimination in many areas because of local initiative either in the form of State laws and local ordinances or as the result of voluntary action. Nevertheless, in the last decade it has become increasingly clear that progress has been too slow and that national legislation is required to meet a national need which becomes ever more obvious. That need is evidenced, on the one hand, by a growing impatience by the victims of discrimination with its continuance and, on the other hand, by a growing recognition on the part of all of our people of the incompatibility of such discrimination with our ideals and the principles to which this country is dedicated. A number of provisions of the Constitution of the United States clearly supply the means "to secure these rights," and H.R. 7152, as amended, resting upon this authority, is designed as a step toward eradicating significant areas of discrimination on a nationwide basis. It is general in application and national in scope.

No bill can or should lay claim to eliminating all of the causes and consequences of racial and other types of discrimination against minorities. There is reason to believe, however, that national leadership provided by the enactment of Federal legislation dealing with the most troublesome problems will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination.

It is, however, possible and necessary for the Congress to enact legislation which prohibits and provides the means of terminating the most serious types of discrimination. This H.R. 7152, as amended, would achieve in a number of related areas. It would reduce discriminatory obstacles to the exercise of the right to vote and provide means of expediting the vindication of that right. It would make it possible to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public. It would guarantee that there will be no discrimination among recipients of Federal financial assistance. It would prohibit discrimination in employment, and provide means to expedite termination of discrimination in public education. It would open additional avenues to deal with redress of denials of equal protection of the laws on account of race, color, religion, or national origin by State or local authorities.

H.R. 7152, as amended, is a constitutional and desirable means of dealing with the injustices and humiliations of racial and other discrimination. It is a reasonable and responsible bill whose provisions are designed effectively to meet an urgent and most serious national problem.

SECTIONAL ANALYSIS

TITLE I—VOTING

General

Title I is designed to meet problems encountered in the operation and enforcement of the Civil Rights Acts of 1957 and 1960, by which the Congress took steps to guarantee to all citizens the right to vote without discrimination as to race or color.

To help meet the problem of lengthy and often unwarranted delays which have occurred in the course of judicial proceedings under the prior acts, title I would require the courts to give priority to voting cases brought by the United States or the Attorney General and would authorize and direct the appointment of a three-judge court, upon request by the Attorney General, in cases brought under the 1957 and 1960 acts.

Discriminatory use of literacy tests and other devices by registration officials is dealt with by the requirements in title I that such officials apply uniform standards and by the prohibition against their disqualifying an applicant for immaterial errors or omissions in papers requisite to voting in Federal elections. In addition, title I would require that, with respect to Federal elections, literacy tests be in writing (unless the applicant requests and State law authorizes a nonwritten test) and would create a rebuttable presumption that an individual who has completed the sixth grade possesses sufficient literacy to vote in Federal elections.

Section 101(a) is designed to insure nondiscriminatory practices in the registration of voters for Federal elections. It would amend existing law (42 U.S.C. 1971(a)) by requiring the application of uniform standards, practices, and procedures to all persons seeking to vote in Federal elections and by prohibiting the disqualification of an individual because of immaterial errors or omissions in papers or acts relating to such voting. It would also require in Federal elections (1) that any literacy test be administered in writing except where an individual requests and State law authorizes a nonwritten test and (2) that a copy of both the test and the answers thereto (whether they are written or oral) be maintained and given to the applicant, if requested. These provisions would provide specific protections to the right to vote and would reduce opportunities for discriminatory application of voting standards without in any way lessening or limiting the broad prohibitions against voting discrimination already contained in existing law (42 U.S.C. 1971(a)).

Section 101(b) would amend existing law (42 U.S.C. 1971(c)) by establishing a rebuttable presumption in voting discrimination suits that a person who has completed the sixth grade of school possesses sufficient literacy to vote in a Federal election.

Section 101(c) defines "Federal elections" to mean any "general, special, or primary election held solely or in part" to choose any Federal official.

Section 101(d) provides that in any voting suits brought under the Civil Rights Acts of 1957 and 1960 in which the United States or the Attorney General is plaintiff, the Attorney General may request, and the chief judge of the circuit shall immediately designate, a three-judge court to hear and determine the case at the earliest practicable date. Appeal from final decisions of such courts would lie to the

Supreme Court. If the Attorney General does not request a three-judge court, the section requires the chief judge of the district immediately to designate a judge to hear and determine the case. The designated judge would also have the duty of expediting the case in every way. The function of this provision is to expedite determinations of voting suits brought under existing law.

TITLE II—PUBLIC ACCOMMODATIONS

General

Title II would prohibit discrimination on grounds of race, color, religion, or national origin in specified places of public accommodation (sec. 201). Included are hotels and motels, theaters and other places of amusement presenting sources of entertainment which move in interstate commerce, and restaurants, lunch counters, and gasoline stations which sell food or goods which move in commerce or which serve interstate travelers (sec. 201 (b) and (c)). It also outlaws discrimination in such establishments if discrimination therein is supported by State action (sec. 201(d)).

The prohibitions of title II would be enforced only by civil suits for an injunction (sec. 204(a)). Neither criminal penalties nor the recovery of money damages would be involved. Persons violating an injunction would, of course, be subject to contempt sanctions, but the imposition of such sanctions would be subject to the limitations and jury trial provisions contained in the Civil Rights Act of 1957 (sec. 205(c)). In addition to private actions, the title authorizes the Attorney General to bring suit in important cases (sec. 204(a)(2)), but where local law appears to proscribe the conduct complained of he must first refer the matter to local authorities and afford them a reasonable time to act before instituting suit (sec. 204(c)).

Section 201(a) declares the basic right to equal access to places of public accommodation, as defined, without discrimination or segregation on the ground of race, color, religion, or national origin.

Section 201(b) defines certain establishments to be places of public accommodation if their operations affect commerce, or if discrimination or segregation in such establishments is supported by State action. These establishments are (1) hotels, motels, and similar establishments, serving transient guests, except those located in a building which has not more than five rooms for rent and which is actually occupied by the proprietor thereof; (2) restaurants, lunch counters, and similar establishments, including those located in a retail store; and gasoline stations; (3) motion picture houses, theaters, and other places of exhibition or entertainment; and (4) establishments which either contain, or are located within the premises of, any establishment otherwise covered, and which are held out as serving patrons of the covered establishment. This last group of establishments (category (4)) would include, for example, retail stores which contain public lunch counters otherwise covered by title II, and other public establishments contained within a covered hotel and intended for use by patrons of the hotel.

Section 201(c) provides the criteria for determining whether the operations of an establishment affect commerce. Hotels, motels, and similar establishments, which serve transient guests, are declared to do so if they are included within the description contained in section 201(b)(1). Restaurants, lunch counters, and similar establishments,

and gasoline stations affect commerce if they serve interstate travelers or a substantial portion of the food or gasoline they sell has moved in interstate commerce. Motion picture houses, theaters, or other places of entertainment are declared to affect commerce if they customarily present films or other sources of entertainment which move in interstate commerce. Finally, establishments within the description contained in subsection 201(b)(4) are declared to affect commerce.

Section 201(d) delineates the circumstances under which discrimination or segregation by an establishment is supported by State action within the meaning of title II. Discriminatory practices are treated as so supported if carried on under color of any law, statute, ordinance, regulation, custom, or usage, or if they are required, fostered, or encouraged by action of a State or any of its political subdivisions.

Section 201(e) exempts bona fide private clubs or other places not open to the public, except to the extent that their facilities are made available to customers or patrons of a covered establishment.

Section 202 requires nondiscrimination in all establishments and places, whether or not within the categories described in section 201, if segregation or discrimination therein is required or purports to be required by any State law or ordinance.

Section 203 lays the foundation for suits by providing that no one shall deprive or attempt to deprive any person of any right or privilege secured by section 201 or 202, or interfere or attempt to interfere with the exercise of any such right or privilege.

Section 204(a) authorizes any person aggrieved or the Attorney General, if he is satisfied that the purposes of the title will be materially furthered, to institute an action for injunctive relief for violations of section 203.

Section 204(b) permits the court in any action commenced pursuant to this title to allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs and provides that the United States shall be liable for costs the same as a private person.

Section 204(c) requires that if State or local law prohibits a practice as to which the Attorney General has received a complaint, the Attorney General must notify the State or local officials and, on request, allow them a reasonable time to act under such laws before bringing suit himself.

Section 204(d) authorizes the Attorney General, in case of any complaint, to use the services of any available Federal, State, or local agencies to secure voluntary compliance with the provisions of the title.

Section 204(e) permits the Attorney General to sue without first complying with section 204(c) if he certifies to the court that the delay would adversely affect the interests of the United States, or that compliance would prove ineffective.

Section 205(a) grants Federal district courts jurisdiction over proceedings instituted pursuant to title II, without regard to whether the party aggrieved has exhausted any other remedies.

Section 205(b) declares that the remedies provided in title II shall be the exclusive means of enforcing the rights created by title II, but that individuals or State or local agencies are not precluded from seeking other available State or Federal remedies to indicate rights otherwise created. Thus, State antidiscrimination laws not inconsistent with title II would not be preempted.

Section 205(c) makes the jury trial provisions of the Civil Rights Act of 1957 applicable to contempt proceedings under title II. By incorporating the provisions of section 151 of the 1957 act, this section establishes that if the accused in a proceeding for criminal contempt is initially tried without a jury and convicted and sentenced to a fine in excess of $300 or imprisonment in excess of 45 days, he may obtain, upon demand, and as of right, a trial de novo before a jury.

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

General

This title would authorize the Attorney General under certain circumstances to bring suit to desegregate public facilities (other than schools) which are owned or operated by State or local governmental units (sec. 301(a)). It would also authorize the Attorney General to intervene in pending actions in the Federal courts seeking relief from discriminatory practices by State and local governmental units or officers (sec. 301(b)).

Section 301(a) provides that when the Attorney General receives a signed complaint regarding a denial of equal protection of the laws on account of race, color, religion, or national origin, through denial or restriction of the right to use public facilities (other than schools) which are owned, operated, or managed by or on behalf of any State or local governmental unit, he may institute suit in the Federal court and seek appropriate relief if he certifies that the signers of the complaint are unable to initiate legal proceedings for relief and that the initiation of a suit by the United States will further the national public policy favoring progress in desegregation of public facilities. It is not intended that determinations on which the Attorney General's certification is based should be reviewable. Public schools and colleges are excluded from the class of public facilities covered by this section; they are covered by title IV.

Section 301(b) provides that the Attorney General may deem a person unable to initiate and maintain legal proceedings within the meaning of subdivision (a) when such person is unable to bear the expense of litigation or to obtain effective legal representation, or when the institution of such litigation might jeopardize his employment or otherwise result in injury or economic damage to himself, his family, or his property.

Section 302 would authorize the Attorney General to intervene for or in the name of the United States in any pending suit in a Federal court seeking relief from a denial of equal protection of the laws on account of race, color, religion, or national origin. The United States, as intervenor, would be entitled to the same relief in such an action as it would have been entitled to had it been an original plaintiff.

Section 303 provides that in any action or proceeding under this title the United States shall be liable for costs the same as a private person.

Section 304 provides that nothing in this title shall affect adversely the right of any person to obtain relief in any court against discrimination in any facility covered by the title.

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

General

Title IV, which is concerned with the desegregation of schools, has two main purposes. First, it would authorize the Commissioner of Education to provide, upon application by local school authorities, technical assistance and financial aid to assist in dealing with problems incident to desegregation. Second, it would authorize the Attorney General to institute suits seeking desegregation of public schools where the students or parents involved are unable to bring suit and where he considers that a suit would materially further the public policy favoring the orderly achievement of desegregation in public education.

Section 401 contains definitions including the definition of "desegregation" as the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

Section 402 would direct the Commissioner of Education to conduct a survey and report to the President and Congress, within 2 years from enactment, concerning the lack of availability of equal educational opportunities by reason of race, color, religion, or national origin in public educational institutions at all levels.

Section 403 would authorize the Commissioner, upon the application of any State or local educational agency, to furnish technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools.

Section 404 would authorize the Commissioner to arrange with colleges and universities for the operation of institutes for special training designed to improve the ability of teachers and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by school desegregation. Stipends could be paid to those attending such institutes in amounts specified by the Commissioner.

Section 405(a) would authorize the Commissioner, upon application by a school board, to make a grant to defray the cost of (1) providing inservice training to teachers and other school personnel in dealing with problems incident to desegregation, and (2) employing specialists to advise in respect of such problems.

Section 405(b) would direct that in passing on an application for a grant, the Commissioner take into consideration the total amount available for the grant program, other pending applications, the financial condition and resources of the applicant, and the seriousness of its problems incident to desegregation.

Section 406 would authorize payments pursuant to a grant or contract under title IV to be made by the Commissioner in advance or by way of reimbursement.

Section 407(a) would confer authority upon the Attorney General to institute civil suits in the Federal district courts in order to achieve desegregation in public schools and colleges. He could bring suit when he received a written complaint from parents that the school board in their district had failed to achieve desegregation, or from an individual that he had been denied admission to or continued attendance at a public college by reason of race, color, religion, or national origin. As a prerequisite to suit, the Attorney General would be required to certify that the signers of the complaint were "unable

to initiate and maintain appropriate legal proceedings" for relief, and that the institution of an action would materially further the public policy favoring the orderly achievement of desegregation in public education. It is not intended that determinations on which the certification was based should be reviewable.

Section 407(b) provides that the Attorney General may deem a person "unable to initiate and maintain appropriate legal proceedings" within the meaning of subsection (a) if such person is unable to bear the expense of the litigation or obtain effective legal representation, or when the Attorney General is satisfied that the institution of the litigation by such person may result in injury or economic damage to him or his family.

Section 407(c) provides that the term "parent" includes any person standing in loco parentis.

Section 408 provides that in any action or proceeding under title IV, the United States is to be liable for costs the same as a private person.

Section 409 provides that nothing in title IV shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

TITLE V—CIVIL RIGHTS COMMISSION

General

Title V, in addition to effecting minor procedural and technical changes, would make the Commission on Civil Rights a permanent body and would give the Commission new authority (1) to serve as a national clearinghouse for information concerning denials of the equal protection of the laws, and (2) to investigate allegations as to patterns or practices of fraud or discrimination in Federal elections.

Section 501 would effect minor amendments to section 102 of the Civil Rights Act of 1957 (42 U.S.C. 1975a), which sets forth rules of procedure for hearings held by the Civil Rights Commission. The witness fees and allowances authorized by subsection (j) would be modified in accordance with increased amounts generally allowed to witnesses in other proceedings. Subsection (k) would be amended to allow the Commission to subpena a witness to testify within the State in which he has appointed an agent for service of process and to testify outside the State if the hearing is to be held within 50 miles of the place in which he is found, resides or is domiciled, does business, or has appointed an agent for service of process.

Section 502 amends section 103(a) of the 1957 act. It would increase the compensation of members of the Commission not otherwise in Government service from $50 to $75 for each day of service and provide for payment of their travel expenses and per diem in lieu of subsistence expenses in accordance with section 5 of the Administrative Expenses Act of 1946.

Section 503 amends section 103(b) of the 1957 act. It provides for payment of travel expenses and per diem in lieu of subsistence expenses to Government members of the Commission in accordance with the Travel Expenses Act of 1949.

Section 504(a) amends section 104(a) of the 1957 act by adding to the duties of the Commission by providing (1) that it serve as a national clearinghouse for information in respect of the equal protection of the laws, and (2) that it investigate written and sworn

allegations of patterns of practices of voting frauds or discrimination in Federal elections.

Section 504(b) repeals section 104(c) of the 1957 act to make the Commission a permanent body.

Section 505 amends section 105(a) of the 1957 act to increase from $50 to $75 a day the maximum amount of compensation payable by the Commission to temporary or intermittent consultants.

Section 506 would amend section 105(g) of the 1957 act by authorizing Federal district courts to order compliance with Commission subpenas by persons domiciled within the jurisdiction of the court or who have appointed an agent for service of process within the jurisdiction.

Section 507 would enact an express grant of rulemaking power to the Commission.

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

General

This title declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments and agencies to take action to carry out this policy. This title is not intended to apply to foreign assistance programs.

Section 601.—This section states the general principle that no person in the United States shall be excluded from participation in or otherwise discriminated against on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance.

Section 602 directs each Federal agency administering a program of Federal financial assistance by way of grant, contract, or loan to take action pursuant to rule, regulation, or order of general applicability to effectuate the principle of section 601 in a manner consistent with the achievement of the objectives of the statute authorizing the assistance. In seeking to effect compliance with its requirements imposed under this section, an agency is authorized to terminate or to refuse to grant or to continue assistance under a program to any recipient as to whom there has been an express finding pursuant to a hearing of a failure to comply with the requirements under that program, and it may also employ any other means authorized by law. However, each agency is directed first to seek compliance with its requirements by voluntary means.

Section 603 provides that any agency action taken pursuant to section 602 shall be subject to such judicial review as would be available for similar actions by that agency on other grounds. Where the agency action consists of terminating or refusing to grant or to continue financial assistance because of a finding of a failure of the recipient to comply with the agency's requirements imposed under section 602, and the agency action would not otherwise be subject to judicial review under existing law, judicial review shall nevertheless be available to any person aggrieved as provided in section 10 of the Administrative Procedure Act (5 U.S.C. 1009). The section also states explicitly that in the latter situation such agency action shall not be deemed committed to unreviewable agency discretion within the meaning of section 10. The purpose of this provision is to

obviate the possible argument that although section 603 provides for review in accordance with section 10, section 10 itself has an exception for action "committed to agency discretion," which might otherwise be carried over into section 603. It is not the purpose of this provision of section 603, however, otherwise to alter the scope of judicial review as presently provided in section 10(e) of the Administrative Procedure Act.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY BACKGROUND AND PURPOSE

General

The purpose of this title is to eliminate, through the utilization of formal and informal remedial procedures, discrimination in employment based on race, color, religion, or national origin. The title authorizes the establishment of a Federal Equal Employment Opportunity Commission and delegates to it the primary responsibility for preventing and eliminating unlawful employment practices as defined in the title.

Section 701(a) sets forth a congressional declaration that all persons within the jurisdiction of the United States have a right to the opportunity for employment without discrimination on account of race, color, religion, or national origin. It is also declared to be the national policy to protect the right of persons to be free from such discrimination.

Section 701(b) states that the title is necessary to remove obstructions to the free flow of interstate and foreign commerce and to insure the complete and full enjoyment by all persons of the rights, privileges, and immunities secured and protected by the Constitution.

Section 702 contains definitions of a number of the terms used in the title.

"Employer" is defined to mean a person engaged in an industry affecting commerce who has 25 or more employees, except that during the first year after the date the enforcement provisions of the title become operative employers having fewer than 100 employees will not be covered, and during the second year after such date, employers with fewer than 50 will not be covered. The definition excludes from the term "employer" all Federal, State, and local government agencies, and bona fide membership clubs (other than labor organizations) which are tax exempt under the Internal Revenue Code (sec. 702(b)).

"Employment agency" is defined to mean any person who regularly undertakes to procure employees for an employer or to procure, for employees, opportunities to work. The U.S. Employment Service and the system of State and local employment services receiving Federal assistance are specifically included. Other governmental agencies are not included (sec. 702(c)).

"Labor organization" is defined in substantially the same way that the term is defined in the Labor-Management Reporting and Disclosure Act of 1959, except that State and local central bodies will be treated as are other labor organizations (sec. 702(d)).

Labor organizations will be covered only if they are engaged in an industry affecting commerce within the meaning of the title, and subsection (e) of section 702 describes the labor organizations which are so engaged. This provision is the same as the comparable provision in the Labor-Management Reporting and Disclosure Act of

1959, except that it excludes any labor organization having fewer than 25 members. Also, during the first year after the date on which the enforcement provisions of the title become operative, a labor organization having fewer than 100 members will be excluded from coverage, and during the second year after such date, those having fewer than 50 members will be so excluded (sec. 702(e)).

The terms "person," "employee," "commerce," "industry affecting commerce," and "State" are defined for the purposes of the title in the manner common for Federal statutes (secs. 702 (a), (f), (g), (h), and (i)).

Section 703 provides that the requirements of the title will not apply with respect to the employment of aliens outside a State, or to religious corporations, associations, or societies.

Section 704(a) describes a number of activities which, if engaged in by employers, will constitute unlawful employment practices. It will be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of race, color, religion, or national origin. It will also be an unlawful employment practice for an employer to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his status as an employee because of his race, color, religion, or national origin.

Section 704(b) provides that it will be an unlawful employment practice for an employment agency to fail or refuse to refer an individual for employment or otherwise to discriminate against him because of race, color, religion, or national origin, or for such an agency to classify or refer any person for employment on the basis of race, color, religion, or national origin.

Section 704(c) describes a number of unlawful employment practices of labor organizations. Under this subsection it will be an unlawful employment practice for a labor organization to exclude or expel or otherwise discriminate against any person from membership because of race, color, religion, or national origin. It will be an unlawful employment practice for a labor organization to limit, segregate, or classify its membership so as to deprive or tend to deprive any person of employment opportunities or to limit such opportunities, or otherwise adversely affect his status as an employee or as a job applicant because of his race, color, religion, or national origin. It will also be an unlawful employment practice for a labor organization to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Section 704(d) makes it an unlawful employment practice for persons controlling apprenticeship or other training programs to discriminate because of race, color, religion, or national origin in admission to, or employment in, such a program.

Section 704(e) provides for a very limited exception to the provisions of the title. Notwithstanding any other provisions, it shall not be an unlawful employment practice for an employer to employ persons of a particular religion or national origin in those rare situations where religion or national origin is a bona fide occupational qualification.

Section 705(a) makes it an unlawful employment practice for an employer to discriminate against any of his employees or applicants

for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member or applicant for membership, because he has made a charge, testified, assisted, or participated in any manner in the enforcement of the title.

Section 705(b) makes it an unlawful employment practice for an employer, labor organization, or employment agency to be responsible for the publishing of any notice or advertisement indicating a preference, limitation, specification, or discrimination based on race, color, religion, or national origin, except where such preference, limitation, specification, or discrimination is based on religion when religion is a bona fide qualification for employment. The prohibitions of this section do not require newspapers and other publications to exercise any control or supervision over, or to do any screening of, the advertisements and notices published by them.

Section 706 creates an Equal Employment Opportunity Commission of five members appointed by the President subject to Senate confirmation. The Commission will be bipartisan in character. Members of the Commission will receive the usual salaries of members of independent regulatory agencies. The members of the Commission will have staggered terms of 5 years each, and will have the usual powers and duties with respect to employment of personnel, quorum, right to act while vacancies exist, use of official seal, reports to Congress and the President.

The Commission will have power to cooperate with and utilize regional, State, and other agencies, both public and private, and individuals. It will also be authorized to furnish technical assistance to persons subject to this title who request it to further their compliance therewith or with an order issued thereunder. If the employees of an employer refuse or threaten to refuse to cooperate in effectuating the provisions of the title, the employer may request assistance from the Commission in effectuating such provisions by conciliation or other remedial action. The Commission may make such technical studies as may be appropriate to effectuate the purposes of the title and may make the results of its studies available to interested agencies. It is also empowered to pay witness fees in the usual amounts (sec. 706(g)).

Attorneys appointed under this section will be permitted, at the direction of the Commission, to appear for and represent the Commission in any case in court (sec. 706(h)). The Commission is directed to cooperate with other departments and agencies in the performance of its educational and promotional activities (sec. 706(i)).

Section 707 contains the provisions relating to enforcement of the title. The first stage in the enforcement process is the filing of a charge in writing under oath by or on behalf of a person claiming to be aggrieved or the filing of a written charge by a member of the Commission, alleging that an employer, employment agency, or labor organization has engaged in an unlawful employment practice. When the Commission receives such a charge, it will furnish the employer, employment agency, or labor organization against whom the charge is made a copy of the charge and shall make an investigation of that charge. If two or more members of the Commission believe after such investigation that reasonable cause exists for crediting the charge, the Commission must endeavor to eliminate any such unlawful employment practice by informal methods of conference, con-

ciliation, and persuasion and, if appropriate, to obtain from the charged party a written agreement describing particular practices which he agrees to refrain from committing. Nothing said or done during and as a part of these endeavors may be used as evidence in a subsequent proceeding (sec. 707(a)).

Section 707(b) provides that if, through these informal methods, the Commission has failed to effect the elimination of an unlawful employment practice (or in advance thereof if circumstances warrant), it shall, if it determines there is reasonable cause to believe that the charged party has engaged in or is engaging in an unlawful employment practice, bring a civil action within 90 days to prevent the charged party from engaging in such unlawful employment practice, except that the Commission is to be relieved of any obligation to bring a civil action in any case in which it has by affirmative vote determined that the bringing of such action would not serve the public interest.

Section 707(c) provides that if the Commission has failed or declined to bring a civil action within the time required, the person claiming to be aggrieved may, if one member of the Commission gives his permission in writing, bring a civil action himself to obtain relief.

Section 707(d) provides that the district courts of the United States (including each U.S. court of places subject to the jurisiction of the United States) are given jurisdiction of actions brought under this title. These actions will be brought either in the judicial district where the unlawful employment practice is alleged to have been committed or in the judicial district in which the charged party has his principal office. No civil action may be based on an unlawful employment practice occurring more than 6 months prior to the filing of a charge with the Commission, except in cases in which the party aggrieved was prevented from filing the charge within the prescribed time by reason of service in the Armed Forces.

Section 707(e) provides that if the court finds that the charged party has engaged or is engaging in an unlawful employment practice as charged in the complaint, it may enjoin him from engaging in such practice and shall order him to take such affirmative action as may be appropriate. This affirmative action may include the reinstatement or the hiring of employees with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). In a case in which the payment of back pay is ordered interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against will reduce the back pay otherwise allowable. No order of the court may require the admission or reinstatement of an individual as a member of the union or the hiring, reinstatement, or promotion of an individual as an employee or payment of any back pay if the individual was refused admission, suspended, or separated, or was refused employment or advancement, or was suspended or discharged for cause.

Section 707(f) permits the court to appoint masters to hear the evidence in these cases. The court may require the master to submit a recommended order together with his findings of fact. The court must also expedite these cases.

Section 707(g) provides that the provisions of the Norris-LaGuardia Act are waived in the case of these civil actions.

Section 707(h) makes the Commission liable for costs in any action brought under the title.

Section 708(a) provides that nothing in the title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided under State law, unless the State law would require or permit the doing of an act which would be an unlawful employment practice under the title.

Section 708(b) provides that where there is a State or local agency which has effective power to eliminate and to prohibit discrimination in employment in cases covered by this title and the Commission determines that the agency is effectively exercising such power, the Commission must seek written agreements with that agency under which it will refrain from bringing civil action in any cases or class of cases referred to in the agreement. No individual may bring a civil action under section 707(c) in any such cases or class of cases. The Commission must rescind any such agreement when it determines the agency no longer has such power or is no longer effectively exercising it.

Section 709(a) authorizes the Commission, when it is investigating a charge, to gather such data and inspect such places and such records and otherwise make such investigation as may be appropriate to determine whether the person charged has committed or is committing an unlawful employment practice, or which may aid in the enforcement of the title.

Section 709(b) provides that, with the consent and cooperation of State and local agencies charged with the administration of State fair employment practices law, the Commission may, for the purpose of carrying out its functions under this title, and within limitations of appropriated funds, utilize State and local agencies and their employees and reimburse them for services so rendered.

Section 709(c) provides that every employer, employment agency, and labor organization subject to the act must keep and preserve such records and make such reports therefrom as the Commission shall prescribe by regulation or order as reasonable, necessary, or appropriate for the enforcement of the title or regulations or orders thereunder. The Commission is directed to require each employer, labor organization, and joint labor management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including but not limited to a list of applicants who wish to participate in such program including the chronological order in which such applications were received, and to furnish to the Commission upon request a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training programs. Where any employer, employment agency, labor organization, or joint labor management committee believes that the application to it of a regulation or order issued under this section would result in undue hardship, it may apply to the Commission for an exemption or bring a civil action in the district court for the district where such records are kept. If either the Commission or the court finds the application of such regulations or order would indeed impose an undue hardship, it may grant appropriate relief.

Section 710 makes the provisions of sections 9 and 10 of the Federal Trade Commission Act applicable to the Commission for the purposes of any investigation provided for in the title, except that the provisions of section 307 of the Federal Power Commission Act shall apply regarding grants of immunity and the attendance of witnesses may not

be required outside the State where the witness is found, resides, or transacts business, and the production of evidence may not be required outside the State where the evidence is kept (sec. 710(a)). Federal agencies are required, when directed by the President, to furnish the Commission upon its request all records, papers, and information in their possession relating to any matter before the Commission (sec. 710(b)).

Section 711 directs the President to take necessary action within the Federal Establishment to insure equal employment opportunities for Federal employees in accordance with the policies of the title (sec. 711(a)). He is also authorized to take such action as may be appropriate to prevent the committing or continuing of unlawful employment practices by persons in connection with the performance of contracts with Federal agencies (sec. 711(b)).

Section 712 requires employers, employment agencies, and labor organizations subject to this title to post in conspicuous places notices to be prepared or approved by the Commission setting forth excerpts of the title and other relevant information (sec. 712(a)). Willful failure to comply will result in a fine of not less than $100 or more than $500 for each offense (sec. 712(b)).

Section 713 provides that this title will not repeal or modify any Federal, State, territorial, or local law creating special rights for veterans.

Section 714(a) empowers the Commission from time to time to issue, amend, or rescind suitable regulations to carry out the provisions of the title. These regulations must be in conformity with standards and limitations of the Administrative Procedure Act.

Section 714(b) provides that in any action or proceeding based on an alleged unlawful employment practice, no person will be subject to any liability or punishment because of the commission of an unlawful employment practice if he shows that the act complained of is in good faith, in conformity with and reliance on a written interpretation or opinion of the Commission. No such person will be subject to any liability or punishment because of his failure to publish or file any information required by the title if he shows that he published or filed such information in good faith, in conformity with the instructions of the Commission issued under the title regarding the filing of such information. When such defense is established it will be a bar to the action or proceeding even though the interpretation or opinion in question is modified or rescinded or is determined by judicial authority to be invalid, and even though, after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the provisions of the title.

Section 715 makes the provisions of section 111, title 18, United States Code, applicable to the personnel of the Commission. This section makes it a crime forcibly to assault, resist, oppose, impede, intimidate, or interfere with certain governmental employees while engaged in or on account of the performance of their official duties. The penalty provided is a fine of not more than $5,000 or imprisonment for not more than 3 years, or both, except that if a deadly or dangerous weapon is used, the maximum fine is not more than $10,000 and the maximum imprisonment is not more than 10 years.

Section 716 authorizes the appropriation of not to exceed $2,500,000 for the administration of the title by the Commission during the

first year after its enactment and not to exceed $10 million for such purpose during the second year after such date.

Section 717 contains the usual type of separability provision.

Section 718 directs the Secretary of Labor to make a study of the factors tending to result in discrimination in employment on account of age and of the consequences of such discrimination. The Secretary must report to Congress thereon not later than June 30, 1964, and is to include in his report such legislative recommendations as he deems advisable.

Section 719 provides the effective date of the title. The bulk of the provisions of this title will become effective on the date of its enactment (sec. 719(a)). However, the provisions which describe the acts constituting unlawful employment practices and the section which deals with the enforcement of the title will not become effective until 1 year after the date of its enactment (sec. 719(b)).

The President is directed as soon as possible to convene one or more conferences for the purpose of enabling leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by it and for the purpose of making plans which will result in the fair and effective administration of the title when all of its provisions become effective. The President is asked to invite the participation in the conferences of the President's Committee on Equal Employment Opportunity, the Commission on Civil Rights, and representatives of appropriate State and private organizations (sec. 719(c)).

TITLE VIII—REGISTRATION AND VOTING STATISTICS

This title (sec. 801) directs the Secretary of Commerce promptly to conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. The statistics would, to the extent recommended by the Commission, include a count of persons of voting age by race, color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in statewide primaries or general elections in which Members of the U.S. House of Representatives are nominated or elected, since 1960. The section also provides for compilation of similar information in connection with the Nineteenth Decennial Census and at such other times as Congress may prescribe.

TITLE IX—PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

Section 901 amends 28 U.S.C. 1447(d) (which specifies procedure after removal to Federal courts), to permit appeal from a Federal court order remanding to the State court from which it was removed any civil rights case removed pursuant to 28 U.S.C. 1443.

TITLE X—MISCELLANEOUS

This title contains three provisions.

Section 1001 provides that nothing in the act should be construed to deny, impair, or otherwise affect any authority which the Attorney General of the United States or any of its agencies or officers may

presently have under existing law to commence or intervene in any action or proceeding.

Section 1002 authorizes the appropriation of such sums as may be necessary to carry out the provisions of the act.

Section 1003 is a general separability clause, providing that the invalidity of any portion of the act shall not affect the validity of the remainder of the act and that the invalidity of its application to any person or circumstances shall not affect its applicability to other persons or circumstances.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as reported. Matter proposed to be stricken by the bill as reported is enclosed in black brackets. New language proposed by the bill as reported is printed in italic.

SECTION 2004 OF THE REVISED STATUTES (42 U.S.C. 1971), AS AMENDED BY SECTION 131 OF THE CIVIL RIGHTS ACT OF 1957 (71 STAT. 637), AND AS FURTHER AMENDED BY SECTION 601 OF THE CIVIL RIGHTS ACT OF 1960 (74 STAT. 90).

Sec. 2004, Voting Rights.

(a) (*1*) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(*2*) *No person acting under color of law shall—*

(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivison who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any Federal election because of an error or omission of such individual on any record or paper relating to any application, registration, payment of poll tax, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing except where an individual requests and State law authorizes a test other than in writing, and (ii) a certified copy of the test whether written or oral and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which

records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88).

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

(b) * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventing relief, including an application for a permanent or temporary injunction, restraining order, or other order. *If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory or the District of Columbia where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election.* In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) * * *

(e) * * *

(f) When used in subsections (a) or (c) of this section, the words "Federal election" shall mean any general, special, or primary election held solely or in part for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives.

[*f*] *(g)* Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(h) In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of

such court a request that a court of three judges be convened to hear and determine the case. A copy of the request shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a reguest in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

CIVIL RIGHTS ACT OF 1957

P.L. 85–315 (71 Stat. 634 et seq.), as amended by P.L. 86–449 (74 Stat. 86 et seq.) and as further amended by P.L. 88–152 (77 Stat. 271)

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. * * *

RULES OF PROCEDURE OF THE COMMISSION *HEARINGS*

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence of testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a

witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.] *it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. In the event the Commission determines that such evidence or testimony shall be given at a public session, it shall afford such person an opportunity voluntarily to appear as a witness and receive and dispose of requests from such person to subpoena additional witnesses.*

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) No evidence or testimony *or summary of evidence or testimony* taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission *such* evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) [A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.]

A witness attending any session of the Commission shall receive $6 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $10 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State [,] wherein the witness is found or resides or is domiciled or transacts business [,], *or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.*

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of [$50] *$75* per day for each day spent in the work of the Commission, shall be [reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.] *paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2; 60 Stat. 808).*

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be [reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.] *paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended (5 U.S.C. 835–42; 63 Stat. 166).*

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

(1) Investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; [and]

(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution[.]*;*

(4) Serve as a national clearing house for information in respect to equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice; and

(5) Investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a [final and comprehensive] report of its activities, findings, and recommendations not later than [September 30, 1964] *January 31 of each year.*

[(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.]

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of [$50] *$75* per diem.

(b) * * *
(c) * * *
(d) * * *
(e) * * *
(f) * * *

(g) In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or *is domiciled or* transacts business, *or has appointed an agent for receipt of service of process*, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(h) * * *

(i) *The Commission shall have the power to make such rules and regulations as it deems necessary to carry out the purposes of this Act.*

SECTION 1447(d), TITLE 28, UNITED STATES CODE

§ 1447. Procedure after removal generally.

(a) * * *
(b) * * *
(c) * * *

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise [.] , *except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.*

ADDITIONAL MAJORITY VIEWS OF HON. ROBERT W. KASTENMEIER

Although I join in the majority opinion recommending passage of H.R. 7152 as reported by the committee, because I believe it is a good bill, it seems important to record the differing views on what the bill ought to contain, views largely embodied in the version of the bill that was approved by the subcommittee handling the legislation.

The subcommittee held intensive hearings for over 4 months, during which period every aspect of the problem of discrimination was considered. Testimony was taken from scores of persons representing groups on every side of each issue. After much thought and discussion the subcommittee recommended a bill to the full committee which was designed to provide for all Americans the rights guaranteed by the Constitution. On the basis of the differences between that bill and the one now before the House, I wish to explain my preference for the bill as originally drafted by the subcommittee.

It is extremely difficult, if not impossible, to write a perfect bill, and certainly the subcommittee bill had its flaws. The provisions in the subcommittee bill providing for the impounding of ballots was maladroit and contributed to the elimination of the entire temporary voting referee procedure. The broad language of title III of the subcommittee bill perhaps should have been tightened to show that the Attorney General was intended to have the power to intervene only in cases involving a denial of constitutional rights because of race, color, religion, or national origin. It was probably a mistake to try to limit the Community Relations Service to six members, as provided in the subcommittee bill; that mistake played a part in the elimination of that useful Service in the reported version of the bill. Limiting the voting census to areas recommended by the Civil Rights Commission, as the reported bill does, rather than making it apply to the entire Nation as provided in the subcommittee bill, is clearly an improvement.

Nevertheless, in several important respects, the subcommittee bill was superior and would have proved more effective in dealing with racial inequality.

In title I, the subcommittee bill would have covered all elections with respect to the terms and administration of voting qualifications, not merely Federal elections as in the reported bill. This would conform with the 1957 and 1960 civil rights laws, which drew no such distinction. For Negroes in the South today, the ability to exercise the franchise in local elections is in many ways more important than their right to vote in Federal elections. Many of the disabilities under which they suffer are inflicted by locally elected officials, acting under color of law, and it is the complete corruption of democracy to permit these officials to operate in contempt of the wishes of the people they govern. No serious constitutional difficulty is presented by applying the provisions of the title to State and local elections, nor is there merit in the claim that the expense of administration would preclude States from enforcing different standards for Federal and

local elections. Indeed, certain States of the Union have shown a great willingness to incur considerable expense and inconvenience, even to closing an entire public school system, to avoid granting equality to their Negro citizens. The State of Virginia, at this writing, is considering shouldering the expense of maintaining a poll tax requirement for State elections if the test is made unconstitutional for Federal elections. It is to be expected that these States would continue to deny the right of some of their citizens to participate equally in local elections even while equal participation in Federal elections is guaranteed by law.

In a democracy there can be no excuse for failing to protect the right to vote of all citizens at every level of government. If the ability of the people to register their just grievances at the polls is frustrated, is to be expected that they will seek other ways of making their views known. Peaceful street demonstrations are one such way. Even this avenue of protest, however, guaranteed by the Constitution, has been closed by force in many communities of our Nation. The men who wrote our Constitution knew from experience the danger to stable government that results when the governed have no legitimate way to make their desires felt by those who govern. For that reason the right to vote and the right to assemble peacefully to petition for redress of grievances are made fundamental props of our Government. It is a serious error, in my opinion, to go only part way in protecting the right to vote. That right is both a symbol of the struggle for freedom and the principal tool for effectuating peaceful change within our system of government.

At the same time that protection of the right to vote is limited, there is a curious feature of title V of the reported bill relating to vote fraud. Not contained in any earlier version of H.R. 7152, and not strictly a civil rights matter, section 504(a) of the reported bill gives the Civil Rights Commission the duty of investigating allegations of vote fraud having nothing to do with race or color. Legislation dealing with voting fraud may indeed be needed, as are laws dealing with other inequities in our electoral system, such as underrepresentation of urban areas, gerrymandering, and obsolete district boundaries, but it can be questioned whether a civil rights bill dealing in every other particular with questions of racial discrimination, is the proper vehicle, and the Civil Rights Commission the proper body, to deal with these wrongs.

In title II, the bill reported by the full committee is deficient in that it guarantees equal access to only some public accommodations, as if racial equality were somehow divisible. Discrimination is prohibited in the reported version of H.R. 7152 in all hotels and lodging-houses (with a minor exception), eating places, and places of entertainment and spectator sports. At the same time, the bill would allow discrimination to continue in barber shops, beauty parlors, many other service establishments, retail stores, bowling alleys, and other places of recreation and participation sports, unless such places serve food. It is hard to follow a morality which allows one bowling alley to remain segregated, while another bowling alley down the street which serves sandwiches must allow Negroes to bowl. There may be constitutional limitations on what activities can be covered by Federal legislation, but the categories covered by title II of the reported bill are not based on constitutional limitations. In this respect the subcommittee bill, which would have covered virtually

all places of public accommodation, to the limit of the Federal Government's power to legislate, was clearly a better bill, and would have avoided many of the anomalous situations presented by the reported bill.

The broad title III of the subcommittee bill was deleted in the reported version in favor of a provision of more limited scope. Section 301 of the reported bill, relating to the power of the Attorney General to bring suit where a person has been denied the right to equal access to public facilities, derives from title II of the subcommittee bill. All that remains of the extensive title III of the subcommittee bill, which would have allowed the Attorney General to initiate suit in virtually any situation in which a person was deprived of his constitutional rights, is section 302 of the reported bill. This provision would allow the Attorney General to *intervene* in—but not to initiate—any suit alleging denial of equal protection of the laws on account of race, color, religion, or national origin. Protection of the rights guaranteed to every American by our Constitution would depend on the complaint of persons who may not be able, because of lack of resources or ignorance, to bring suit, or who may be unwilling to bring suit because of intimidation or fear.

Title VII of the reported bill is inferior to the FEPC section of the subcommittee bill because its procedure is slower and more cumbersome. The administrative agency envisioned by the subcommittee bill, which would have been able to hold hearings and issue enforceable orders on a finding of discrimination in hiring or union membership, has been abandoned. Instead, the reported bill provides principally for a legal agency to bring court suit on behalf of any person who has been discriminated against. This system has all the disadvantages of a slow and costly court action in which a person denied employment because of his race may have to wait as long as 2 years for relief. It should be noted that that FEPC section in the subcommittee bill had already been reported favorably by the House Education and Labor Committee.

Once these differences and shortcomings are pointed out, however, it must be said that the civil rights bill now before the House is a good bill. Although its coverage is not as broad as some of us would like, in the areas with which it is concerned it is well drafted and designed to be effective.

Some of its features, particularly the three-judge court provision for expediting voting cases, may prove to be more effective than any of the earlier versions of the bill. In addition, several of the improvements made in the original version of the bill by the subcommittee are retained in the reported bill. These included using both the 14th amendment and the commerce clause as the authority for prohibiting segregation in places of public accommodation, allowing the Attorney General to initiate suits to desegregate all public facilities as well as schools, requiring that the Federal Government "shall take action" to prevent the use of Federal funds in support of segregated facilities (the original administration bill would have made action discretionary), making the Civil Rights Commission a permanent agency, and providing for review of the decision of a Federal district court to remand a civil rights case to the State court from which it was removed.

For these reasons, I joined with my colleagues in voting out the

substitute bill. The subcommittee bill would have been preferable, but the bill reported out by the full Judiciary Committee will be useful—even necessary—in dealing with the single most divisive force in America today, the force of racial injustice.

ROBERT W. KASTENMEIER.

ADDITIONAL VIEWS OF HON. GEORGE MEADER

GENERAL STATEMENT

Since the Civil War and the adoption of the 13th, 14th, and 15th amendments to the U.S. Constitution, it has been the official policy of the U.S. Government to treat all citizens alike regardless of race, color, or national origin.

Aside from statutes passed in the aftermath of the Civil War, notably the Civil Rights Acts of 1871, very little was done in this field by the Congress until the adoption of the Civil Rights Act of 1957 under the administration of President Eisenhower. This was the first major civil rights measure enacted in 85 years.

Subsequently, the Civil Rights Act of 1960, also under Eisenhower, was enacted.

We are now considering an omnubus bill, H.R. 7152, to effectuate further by congressional action a longstanding national policy.

It is the position of the undersigned that the Congress has an obligation to carry out national policy with respect to civil rights, utilizing all powers vested in the Federal Government by the U.S. Constitution for that purpose.

But the Congress should not attempt to violate other constitutional provisions.

It should not try to exceed limitations upon the powers of Congress. It should not seek to destroy protections of citizens guaranteed by the Bill of Rights when citizens are proceeded against by their Federal Government.

Clearly, Congress does have power in the following areas:

(1) Protection from denial or abridgment of the right to vote secured by the 15th amendment.

(2) Regulation and protection of the interstate transportation of persons.

(3) Assurance that Federal financial assistance programs will not be employed to perpetuate discrimination by reason of race or color.

(4) Prevention of discrimination on grounds of race or color in employment by the Federal Government or in the execution of contracts let by the Federal Government.

It has been the aim of the undersigned to shape a bill which would meet the criteria above stated and become law as the Civil Rights Act of 1963 or possibly the Civil Rights Act of 1964.

LEGISLATIVE HISTORY

Early in January 1963, after the convening of the 88th Congress, Republican members of the House Judiciary Committee met informally and discussed what legislation in the field of civil rights might appropriately be considered by the Congress. These conversations resulted in the drafting of an omnibus civil rights bill, H.R. 3139, introduced by Mr. McCulloch, the ranking Republican member of

the Judiciary Committee, January 30, 1963. In this legislation, Mr. McCulloch was joined by nine other minority members of the Judiciary Committee and 31 other Republican Members of the House of Representatives.

June 3, 1964, four of the Republican members of the House Judiciary Committee (Lindsay, Cahill, MacGregor, and Mathias) introduced public accommodations bills based on the equal protection clause of the 15th amendment to the Constitution. Twenty-seven other Republicans introduced companion bills.

These members undertook to discuss these measures on the floor of the House on June 4, but were obstructed in a rather spectacular manner by numerous quorum calls and other proceedings undertaken for the purpose of delaying the debate. See Congressional Record, pages 9586 to 9603.

It was not until June 19, 1963, that the President transmitted to the Congress a message on civil rights asking for legislation, which resulted in the introduction of the administration omnibus civil rights bill, H.R. 7152, by Mr. Celler, June 20, 1963.

Previously, members of the Judiciary Committee had discussed informally various drafts of legislation suggested by the Department of Justice.

In the light of this history, it was astonishing that when the Attorney General appeared before Subcommittee No. 5 on Wednesday, June 26, 1963, he testified in response to a question by the undersigned (hearings, p. 1394) that he was not familiar with the bills introduced by Republicans with respect to public accommodations and had not had time to read them even though the Lindsay bill, H.R. 6720, is only four pages long.

SUBCOMMITTEE ACTION

Twenty-two days of hearings, from May 8 to August 2, 1963, were held by Subcommittee No. 5, and the testimony of 101 witnesses is contained in 3 volumes of 2,649 printed pages.

Subcommittee No. 5 commenced 17 days of executive hearings on August 14 to consider and mark up the administration bill, H.R. 7152.

At the outset of these sessions a question of committee policy was raised (by the undersigned); namely, whether it would be the objective of the subcommittee to produce a well-worded, workable bill which stood a chance of becoming law without major modification or whether it would be our purpose to add to the bill controversial provisions which could be sloughed off as trading material during the legislative process.

After discussion, the subcommittee agreed it would not load up the bill but would try to write a clearly worded, reasonable, and workable bill which stood a good chance of becoming law.

On this basis the committee proceeded to consider the provisions of the administration bill in nonpartisan, largely unanimous action, modifying the language title by title, page by page, line by line, arriving at tentative decisions on phraseology, and agreeing on items which required further information and further study.

In this process legislative findings, referred to by some as "oratory," were deleted from various sections of the original administration bill. For example, all of sections 2 and 201 of title II were stricken. In title IV (desegregation of public education) all references to "racial imbalance" were deleted.

The subcommittee had arrived at tentative decisions on the phraseology on all the titles of H.R. 7152 at the time the tax reduction bill, H.R. 8363, was being debated on the floor of the House.

At that time a curious change in the atmosphere of subcommittee consideration abruptly took place. Nonpartisan harmony evaporated. A rigidity of position based on the possession of an overwhelming majority of votes (seven Democrats to four Republicans) prevailed. Tentative decisions suddenly became permanent and unchangeable. Alternatives to titles and sections were rejected out of hand, and three explosively controversial provisions were added:

(1) H.R. 405, the so-called FEPC bill, reported by the House Education and Labor Committee, then pending before the Rules Committee.

(2) A broad title III vesting sweeping powers in the Attorney General to initiate and to intervene in any case to enforce rights derived from the Constitution or laws of the United States.

(3) A broadening of the public accommodations section of title II to extend its coverage to practically every type of business.

Thus modified the subcommittee reported the bill to the full Judiciary Committee on October 2.

The merits of these new provisions and, indeed, the questions of the remedy of "government by injunction" and the stretching of the "interstate commerce clause" and the "equal protection of the laws" clause to take over all governmental powers in these areas (including State and local) were never debated in the subcommittee.

JUDICIARY COMMITTEE ACTION

October 8, 1963, the Judiciary Committee commenced consideration of H.R. 7152 and, after general discussion and before commencing to read the bill, decided to call the Attorney General before the committee in executive session to obtain his comments, particularly upon the modifications made in the administration's bill by the subcommittee.

On Tuesday, October 15, 1963, and Wednesday, October 16, 1963, the Attorney General presented a prepared statement, which was released to the press, and was interrogated by members of the committee.

In the judgment of the undersigned the transcript of the record of this testimony should be made public as a supplement to the committee hearings.

October 10, 1963, title I of the bill (voting) was read and certain amendments were offered. October 22, 1963, they were withdrawn, and action was taken on one amendment which was defeated.

Thereupon a motion was made to report H.R. 7152 as amended by the subcommittee. This motion was pending and a rollcall vote had been ordered but not taken when the session of the committee terminated by reason of the House being in session.

Subsequent scheduled sessions of the committee were postponed until Tuesday, October 29, when a motion to report H.R. 7152 as reported by the subcommittee, was defeated, and a motion to strike all after the enacting clause of H.R. 7152 and insert substitute language was adopted.

The origin of the substitute language is not entirely clear since it was not drafted by the committee. A copy was delivered to the home

of the undersigned at 10:10 p.m. on Monday, only a few hours before the session the following Tuesday at 10:30 a.m., at which the substitute language was read, declared not subject to amendment and then, at a meeting in the afternoon, since the morning meeting was again interrupted by a session of the House, was ordered reported.

STATEMENT OF POSITION

It is the position of the undersigned that Congress can and should take action within its constitutional powers and sphere of authority to carry out our national policy against discrimination by reason of race or color in the four areas noted above, namely, voting, interstate travel, Federal financial assistance and Federal employment and contracts, but for the enforcement of public policy in such legislation tried and established sanctions should be employed.

The undersigned is opposed to extension of the principle of enforcing public policy by injunction because this extraordinary and ever-expanding sanction deprives a citizen, when proceeded against by his Federal Government, of the protections guaranteed by the Bill of Rights of the U.S. Constitution designed to protect citizens from tyrannical behavior by government officials.

The undersigned likewise opposes strained interpretations of the interstate commerce clause or the equal protection of the laws clause tending to undermine the vitality and autonomy of State and local governments and to promote the expansion of Federal power beyond constitutional limits.

GOVERNMENT BY INJUNCTION

There is a growing and, to me, an alarming tendency in adopting new Federal programs to utilize the sanction of what may be called government by injunction.

Such statutes authorize the U.S. Government, for the enforcement of the public policy promulgated, to institute in the U.S. district court a civil action for preventive relief including an application for a permanent or temporary injunction, restraining order or other order.

These actions are commonly known as suits in equity, or in chancery, to be heard by the judge without a jury (except in rare cases.) Instead of resulting in a money judgment against the defendant such equity suits result in a decree in which the defendant is ordered to refrain from committing certain acts or, by the use of a double negative, is commanded to perform certain acts.

Such a decree is enforced by contempt proceedings in which there is no right to jury trial, and in case the defendant is found to be in contempt, he is punished by imprisonment at the discretion of the judge.

The effect of the employment of this sanction of injunction rather than a civil action at law for the recovery of damages or the institution of criminal proceedings by indictment or information is that the defendant is shorn of most of the protections set forth in the Bill of Rights of our Constitution.

In a criminal proceeding; for example, the defendant has all of the protections written into our body of criminal law such as (1) the presumption of innocence, (2) the right to be confronted by accusers, (3) the right of cross-examination, (4) the requirement that proof of

guilt be beyond a reasonable doubt according to a body of well-developed rules of evidence, and (5) the right to trial by a jury of his peers.

These protections either do not exist at all when the citizen is proceeded against by his government by the injunctive process, or they exist in a less adequate form.

It was precisely because of the tyrannical behavior of the British monarchy and the British courts when proceeding against freemen that our Founding Fathers were led to incorporate protections and due process of law in the first 10 amendments to our U.S. Constitution commonly known as the Bill of Rights.

There follows a list of Federal statutes in which the Federal Government is authorized to proceed against citizens by injunction:

Antitrust laws, restraining violation—by U.S. attorney under direction Attorney General—15 U.S.C. 4, July 3, 1890.

Associations engaged in catching and marketing aquatic products restrained from violating order to cease and desist monopolizing trade—by Department of Justice—15 U.S.C. 522, June 25, 1934.

Association of producers of agricultural products from restraining trade—by Department of Justice—7 U.S.C. 292, February 18, 1922.

Atomic Energy Act, enjoining violation of act or regulation—by Atomic Energy Commission—by Attorney General—42 U.S.C. 1816, August 1, 1946.

Bridges over navigable waters, injunction to enforce removal of bridges violating act as to alteration of bridges—by Attorney General—33 U.S.C. 519, June 21, 1950.

Clayton Act, violation of enjoined—U.S. attorney under direction of Attorney General—15 U.S.C. 25, October 15, 1914.

Electric utility companies, compliance with law enforced by injunctions—by Federal Power Commission—16 U.S.C. 825m, August 26, 1935.

False advertisements, dissemination enjoined—by Federal Trade Commission—15 U.S.C. 53, March 21, 1938.

Freight forwarders, enforcement of laws, orders, rules, and so forth, by injunctions—by Interstate Commerce Commission or Attorney General—49 U.S.C. 1017, May 16, 1942.

Fur Products Labeling Act, to enjoin violation—by Federal Trade Commission—15 U.S.C. 69g, August 8, 1951.

Enclosure of public lands, enjoining violation—by U.S. attorney—43 U.S.C. 1062, February 25, 1885.

Investment advisers, violations of statute, rules and regulations governing, enjoined—by Securities and Exchange Commission—15 U.S.C. 80b-9, August 22, 1940.

Gross misconduct or gross abuse of trust by investment companies, enjoined—by Securities and Exchange Commission—15 U.S.C. 80a-35, August 22, 1940.

Use of misleading name or title by investment company, enjoined—by Securities and Exchange Commission—15 U.S.C. 80a-34, August 22, 1940.

Violation of statute governing, or rules, regulation, or orders of SEC by investment companies, enjoined—by Securities and Exchange Commission—15 U.S.C. 80a-41, August 22, 1940.

Fair Labor Standards Act, enjoining of violations—by Administrator, Wage and Hour Division, Department of Labor, under Direction of Attorney General, see 29 U.S.C. 204b—29 U.S.C. 216c, 217, June 25, 1938.

Longshoremen's and Harbor Workers' Compensation Act, enforcement of order by injunction—by U.S. attorney, see 29 U.S.C. 921a—33 U.S.C. 921, March 4, 1927.

Import trade, prevention of restraint by injunction—by U.S. attorney, under direction of Attorney General—15 U.S.C. 9, August 27, 1894.

Wool products, enjoining violation of Labeling Act—by Federal Trade Commission—15 U.S.C. 68e, October 14, 1940.

Securities Act, actions to restrain violations—by Securities and Exchange Commission—15 U.S.C. 77t, May 27, 1933.

Securities Exchange Act, restraint of violations—by Securities and Exchange Commission—15 U.S.C. 78u, June 6, 1934.

Stockyards, injunction to enforce order of Secretary of Agriculture—by Attorney General—7 U.S.C. 216, August 15, 1921.

Submarine cables, to enjoin landing or operation—by the United States—47 U.S.C. 36, May 27, 1921.

Sugar quota, to restrain violations—by U.S. attorney under direction of Attorney General, see 7 U.S.C. 608(7), and 7 U.S.C. 608a-6, May 9, 1934.

Water carriers in interstate and foreign commerce, injunctions for violations of orders of ICC—by ICC or Attorney General 49 U.S.C. 916, September 18, 1940.

Flammable Fabrics Act, to enjoin violations—by Federal Trade Commission—15 U.S.C. 1195, June 30, 1953.

National Housing Act, injunction against violation—by Attorney General—12 U.S.C. 1731b. This code citation was repealed.

Defense Production Act—50 U.S.C. appendix 2109, July 31, 1951.

National Labor Relations Act (Taft-Hartley Act)—29 U.S.C. 160(L), June 23, 1947.

Rent control cases—50 U.S.C. 1896, March 30, 1949.

Federal Food, Drug, and Cosmetic Act—21 U.S.C. 332, June 25, 1938.

Trademark infringement—15 U.S.C. 1116, July 5, 1946.

Rubber Act of 1948—50 U.S.C. 1933, March 31, 1948.

International Wheat Agreement Act—7 U.S.C. 1642, October 27, 1949.

Natural Gas Act—15 U.S.C. 1717s, June 21, 1938.

Perishable Agricultural Commodities Act—7 U.S.C. 499k, June 10, 1930.

Shipping Act of 1916—46 U.S.C. 828, September 7, 1916.

Federal Plant Pest Act—Secretary of Agriculture may seek injunctive relief to enforce orders relating to treatment and disposal. 7 U.S.C. 150dd(b); Public Law 85-36 (71 Stat. 33), May 23, 1957.

Civil Rights Act of 1957—Attorney General may ask for injunctive relief to prevent illegal practices relating to voting rights. 42 U.S.C. 1971(c); Public Law 85-315 (71 Stat. 637), September 9, 1957.

Federal Aviation Act of 1958—Board or Administrator may seek injunctive relief to enforce rules, regulations, etc., 49 U.S.C. 1487; Public Law 85–726 (72 Stat. 796), August 23, 1958.

Textile Fiber Products Identification Act—Federal Trade Commission may seek injunctive relief to restrain unlawful acts. 15 U.S.C. 70f; Public Law 85–897 (72 Stat. 1721), September 2, 1958.

Federal Hazardous Substances Labeling Act—Permits injunctive relief to restrain violations of the act—15 U.S.C. 1267, 1268; Public Law 86–613 (74 Stat. 378), July 12, 1960.

Fair Labor Standards Amendments of 1961—Permits injunctive relief of any withholding of payment of minimum wages or overtime found by the court to be due employees. 29 U.S.C. 217; Public Law 87–60 (75 Stat. 74), May 5, 1961.

Federal Water Pollution Control Act Amendments of 1961—Attorney General may bring suit for abatement of pollution. 33 U.S.C. 466g(f); Public Law 87–88 (75 Stat. 209), July 20, 1961.

Small Business Investment Act Amendments of 1961. Injunctive relief is authorized to restrain violations. 15 U.S.C. 687c(a); Public Law 87–341 (75 Stat. 755), October 3, 1961.

Welfare and Pension Plans Disclosure Act Amendments of 1961. Injunctive relief to enjoin improper acts or practices. 29 U.S.C. 308(f); Public Law 87–420 (76 Stat. 38), March 20, 1962.

One of the latest proposals for use of the "government by injunction" is contained in S. 2136 to amend the Foreign Agents Registration Act by authorizing the Attorney General to proceed against foreign agents through the injunctive process. Another is H.R. 594 pending before the House Interstate and Foreign Commerce Committee providing in general that the Federal Trade Commission, upon complaint that an unfair trade practice is being committed, may issue a temporary cease and desist order to compel the discontinuance of the practice pending completion of proceedings before the Commission.

In addition, in the last few decades we have created a multitude of administrative tribunals and so-called independent agencies, boards, commissions, etc., which, after administrative hearings, findings and orders are authorized to seek enforcement of their orders through the injunctive powers of the Federal courts.

Does this mean that the historic method of compelling observance of national policy, in which inhere the protections of the Bill of Rights, is no longer efficient and workable in the complicated society of our time? Or does it mean that the proponents of the new activities which the Federal Government is increasingly undertaking are impatient at the delays and difficulties attending criminal and civil legal proceedings where alleged violators are guaranteed due process of law?

Abuses in the use of injunctions by individual citizens and corporations, particularly in labor disputes, led to the enactment of the Norris-La Guardia Act (title 29, sec. 101–115; 47 Stat. 70; March 23, 1932) which limits the use of injunctions in proceedings between citizens.

But now, a remedy which we deny to private citizens in labor disputes, we are employing more and more when the Federal Government proceeds against its citizens.

It is the Government itself employing this extraordinary power of the sovereign; in derogation of the rights of its citizens and circum-

venting the protection of their liberties which were built up at great cost over a long period of time.

The undersigned is of the opinion that the objectives of the Civil Rights Act of 1963 (or 1964?) can be attained without resorting to this arbitrary, autocratic remedy which impairs the personal liberties of our citizens. Therefore, the undersigned opposes the use of the sanction of government by injunction in any part of the act.

EXPANSION OF FEDERAL POWER

Our unique Federal system, involving checks and balances and separation of powers, was wisely devised by the framers of our Constitution to prevent an accumulation of power threatening the liberties of individual citizens.

First, there is a separation of powers between the Federal Government and the State governments; and then within each State and the Federal Government, a separation of powers between the tripartite branches, legislative, executive, and judicial.

The balance of equilibrium as between the State and the Federal Government was achieved by enumerating specified powers vested in the Federal Government, reserving the remainder of all governmental power to the States or to the people.

Some of the enumerated powers vested in the Government, however, are couched in such broad terms that they are subject to a wide latitude of interpretation. In some of the more extreme and fantastic interpretations, specified powers could be and, in the view of the undersigned, have been, employed to expand the power of the Federal Government and the orbit of its operation at the expense of State and local governments and the people, in whom all powers not specifically granted to the Federal Government, were to remain.

The Federal Government has been ingenious in finding ways, through interpretation of these broad constitutional phrases to encroach, little by little, over the years, and to establish a precedent here and another one there, with the result that today the vitality, autonomy, and even the viability of State and local governments and the governmental powers of the people are seriously threatened.

INTERSTATE COMMERCE CLAUSE

One such governmental power utilized to aggrandize the National Government's authority at the expense of the States and the people is the power of Congress, stated in article I, section 8, clause 2, "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

The danger of stretching this power by a strained interpretation was classically expressed in the case declaring the NRA unconstitutional in an opinion by Justice Cardozo in *A. L. A. Schechter Poultry Corp. et al.* v. *United States*, 295 U.S. 495. Mr. Justice Cardozo, concurring, page 554:

> There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours "is an elastic medium which transmits all tremors throughout its territory;

the only question is of their size." Per Learned Hand, *J.*, in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. Cf. *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1. There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. *If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system.* [Italic supplied.]

EQUAL PROTECTION OF THE LAWS CLAUSE

Another clause, relevant to this legislation, employed in a somewhat different way to aggrandize the power of the Federal Government at the expense of States and citizens is a strained interpretation of the "equal protection of the laws" clause of section I of the 14th amendment.

It is this clause, it will be noted, that is being relied on by the Supreme Court of the United States, without benefit of any act of the Congress, in currently considering cases on legislative apportionment, based upon the *Baker* v. *Carr* decision, 369 U.S. 186.

The philosophy of *Baker* v. *Carr* seems to be that where a suit is brought by any citizen or citizens claiming inadequate representation in a legislative body, the courts may undertake in this private litigation, to determine a matter most vital to the autonomy and functioning of a legislative body, namely, its composition.

In the instant legislation, a similar strained interpretation of the "equal protection of the laws" clause was employed to extend the coverage of Title II: Public Accommodations, to practically every business and professional enterprise in the United States.

In a prepared statement read before the House Judiciary Committee, then released to the press, the Attorney General criticized, one might even say ridiculed, this proposed Federal power grab in the following terms:

> The subcommittee has added to this coverage (Title II: Public Accommodations) a catchall which prohibits discrimination in any business operating under State or local "authorization, permission or license" (sec. 201(c)(4)). This addition meets none of the criteria we thought important. Rather it represents an effort to go the full limits of the constitutional power contained in the 14th amendment.
>
> What businesses are covered by this provision are unclear. It would seem to extend Federal regulation to law firms, medical partnerships and clinics, private schools, apartment houses, insurance companies, banks, and potentially, to all businesses which a State does not affirmatively ban. And its application, if a narrower interpretation is proper, is in any event uneven to the extent that it depends upon widely divergent State licensing practices to determine its coverage.

In these days of rapidly growing bureaucracy, not only in size, in expenditures, but more importantly in power, and with the Supreme Court indicating no inclination to impose restraint on Federal expan-

sion, it remains for the Congress to protect and preserve our federal system insuring that "centripetal forces" will not be "isolated to the exclusion of the forces that oppose and counteract them" and thus, safeguard and promote individual liberty and insure the right of every citizen to fullest participation in his Government.

The undersigned holds the view that the administration bill as originally introduced, the version of the bill reported by the subcommittee and the version reported by the full Judiciary Committee all violate the principles stated above and the undersigned therefore cannot support the legislation in its present form.

It is to be hoped that careful consideration by House Members of the bill during debate in the Committee of the Whole and during the amendment process on the floor of the House will lead to the bill's modification by elimination of objectionable features. In this event, the undersigned will support its passage.

It will be the objective of the undersigned to offer and support amendments to achieve this objective and to that end, there follows a title by title discussion of the bill, setting forth major amendments which the undersigned proposes to offer or support.

TITLE I.—VOTING RIGHTS

The original administration bill contained a provision for Federal court appointment of temporary referees to register voters in the event the Attorney General certified that "fewer than 15 percent of the total number of voting age persons of the same race as the persons alleged in the complaint to have been discriminated against are registered (or otherwise reported as qualified to vote)."

The subcommittee added a provision that the votes of persons thus determined to be qualified to vote by the court or temporary voting referees should be impounded pending a determination of the case and a finding that a pattern or practice of discrimination existed.

The Attorney General, testifying before the full Judiciary Committee, strenuously objected to this impounding provision and urged that the votes of such persons be counted even if they affected the outcome of an election, although subsequently, the court might fail to find the existence of a pattern or practice of discrimination, the only jurisdictional basis on which court-appointed voting referees were authorized by the 1960 Civil Rights Act to certify eligibility of voters.

Thus, the outcome of an election might have been determined by votes illegally cast. The Attorney General thought this was all right.

The compromise version as reported by the full Judiciary Committee eliminated completely the provision for temporary voting referees and thus improved the legislation.

One area of Federal authority with respect to voting is section 2 of the 14th amendment which is mandatory and reads as follows:

APPORTIONMENT OF REPRESENTATIVES IN CONGRESS

> SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress,

the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

In my judgment the Congress is under an obligation to carry out the mandate of section 2 of the 14th amendment by reducing the representation in the House of Representatives of States in which the right to vote is denied or abridged.

This responsibility is clearly that of the Congress, not the Judiciary nor the Executive. But for 95 years the Congress has failed and neglected to comply with this responsibility.

Because of the difficult problems in carrying out the mandate imposed by section 2 of the 14th amendment of the Constitution, it was my suggestion that a bipartisan congressional commission composed of four Members of the House and four Members from the Senate, with a Chairman elected by such members, being an outstanding citizen from private life, be given the task of making studies and finding facts and reporting to the Congress recommendations together with the necessary evidence upon which the Congress in apportioning representatives among several States could effectuate the mandate of section 2 of the 14th amendment.

In the full Judiciary Committee I offered this amendment which was rejected by a voice vote. Title I with this amendment would constitute workable, reasonable, and effective legislation for enforcement of voting rights which the undersigned will support. The text of the amendment follows:

ESTABLISHMENT OF COMMISSION; DUTIES

SEC. 102. (a) COMMISSION ESTABLISHED.—There is hereby established a bipartisan commission to be known as the "Commission on Voting."

(b) DUTIES OF COMMISSION.—The Commission shall conduct a full and complete investigation and study to ascertain whether and to what extent the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the inhabitants of such State, being 21 years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, and shall also ascertain the whole number of persons in each State, excluding Indians not taxed. The Commission shall calculate the number of Representatives to be apportioned among the several States, reducing the basis of representation therein by the proportion which the number of such citizens whose right to vote is so denied or in any way abridged bears to the whole number of citizens 21 years of age in such State. The Commission shall report

the results of its investigation and study together with all evidence upon which its findings are based to the Congress and shall make such recommendations for the effectuation and enforcement of section 2 of the 14th amendment of the Constitution of the United States as it may deem desirable.

MEMBERSHIP OF THE COMMISSION

SEC. 103. (a) NUMBER AND APPOINTMENT.—The Commission shall be composed of nine members as follows:

(1) Four Members of the House of Representatives, two from each of the two major political parties, to be elected by the Representatives of the respective parties.

(2) Four Members of the United States Senate, two from each of the two major political parties, to be elected by the Senators of the respective parties.

(3) A Chairman elected by the foregoing members who is an outstanding citizen of the United States in private life.

(b) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(c) QUORUM.—Five members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 104. (a) MEMBERS OF CONGRESS.—Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) CHAIRMAN.—The Chairman shall receive compensation at the rate of $25,000 per annum, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of his duties.

TITLE II—PUBLIC ACCOMMODATIONS

The compromise version reported by the full Judiciary Committee is more limited than the subcommittee version and broader in some respects, and more limited in others than the original administration proposal. Title II as reported, however, exceeds, in my judgment, the proper sphere of the authority of the Federal Government and relies for its enforcement upon government by injunction.

In the subcommittee, the undersigned offered an amendment confining Federal action in the field of public accommodations to assuring equal access to transportation facilities by interstate travelers and providing for enforcement of public policy in this field by criminal sanctions.

There is also a nonpreemption provision which would preserve the validity, in the field of public accommodations, of the laws of 32 States.

The text of the amendment offered as a substitute for the provisions of title II is as follows:

SEC. 201. (a) Chapter 13 of title 18, United States Code, is hereby amended by adding at the end thereof the following new section:

"§ 245. Public accommodations.

"(a) No owner, operator, lessee, agent, or employee of any hotel, motel, inn, restaurant, eating establishment, or gasoline station which is situated or advertised adjacent to an interstate or primary highway (as defined in title 23, United States Code, sec. 103) and which is held out as serving or offering to serve interstate travelers, and no owner, operator, lessee, agent, or employee of any public conveyance on land or water, or in the air, including the stations and terminals thereof, serving interstate travelers, shall directly or indirectly refuse, withhold from, or deny to any person any accommodations, advantages, facilities, or privileges thereof on account of race, creed, color, or national origin.

"(b) Whoever violates the above provision, or aids, incites, requires, or encourages such violation, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

"(c) In any action commenced pursuant to this section, the United States shall be liable for costs, including reasonable attorney's fees, if it fails to sustain the prosecution.

"(d) Nothing contained in this title shall be construed as indicating an intent on the part of Congress to occupy the field in which such title operates, to the exclusion of any State laws on the same subject matter, nor shall any provision of this title be construed as invalidating a provision of State law which would be valid in the absence of such title, except to the extent that there is a direct and positive conflict between such provisions so that the two cannot be reconciled or consistently stand together."

(b) The table of contents of such chapter 13 is amended by inserting

"245. Public accommodations."

immediately below

"244. Discrimination against person wearing uniform of Armed Forces."

TITLE III—DESEGREGATION OF PUBLIC FACILITIES AND TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

Both contain the sanction of proceeding by injunction and purport to authorize Federal action in areas beyond the scope of Federal authority. I oppose them.

TITLE V—COMMISSION ON CIVIL RIGHTS

Makes the Commission permanent and adds to its duties investigation of allegations that citizens are unlawfully being accorded or denied the right to vote or having their votes properly counted. I favor the provisions of title V.

Certainly it is within the power of the Federal Government, when granting financial assistance in a host of federally sponsored programs, to specify the conditions and terms upon which that assistance is granted. Clearly, the Federal Government should incorporate in any such grants or loans our well-established national policy against discrimination on grounds of race and color. Federal financial assistance should not underwrite the perpetuation of discrimination. While this policy is clear, it is not easy to express in clear statutory language.

Subcommittee members wrestled with this problem during the hearings and then during consideration of the bill in executive session. The subcommittee urged that criteria or standards be established to guide administrators in applying this policy in administering financial assistance programs, but it was unsuccessful in its attempt to have the executive branch suggest language spelling out criteria and standards.

The subcommittee sought a way of making the withholding mandatory, rather than discretionary with administrative officials.

Administration witnesses strenuously urged that mandatory provisions would be unworkable and advocated that the withholding of funds be discretionary.

The subcommittee also sought to provide for adequate judicial review. Members cited examples of Federal officials withholding funds from States and local governments by arbitrary decision from which no adequate redress appeared to be available.

At one point, in seeking to achieve these objectives a draft was suggested giving administrators of financial assistance programs rulemaking authority and then authorizing the enforcement of such regulations against discrimination by injunction processes. In fact, this version of the withholding section was contained in the bill reported by the subcommittee.

The compromise version reported by the full Judiciary Committee struck the government-by-injunction remedy and thus was an improvement over the subcommittee version.

It is my belief that objectives of nondiscrimination with respect to Federal financial assistance programs can be achieved in a much simpler and more workable way. We can provide that recipients of Federal financial assistance, as a condition to receiving the grant or loan, must enter into an enforceable undertaking against discrimination in the administration of the program. Such an undertaking would be enforceable by existing law governing remedies for the violation of a contract.

The text of the substitute I propose for "Title VI—Nondiscrimination in Federally Assisted Programs" is as follows:

> SEC. 601. Any executive department or agency of the United States which extends financial assistance in the United States (by way of grant, contract, or loan) shall require, as a condition to the receipt of such assistance, that the recipient assume a legally enforceable undertaking designed to insure that—
>
> (1) no person because of his race or color, will be excluded from all of or a part of the benefits of such

assistance or will be extended benefits of a different nature; and

(2) no person in order to receive the benefits of such assistance need subject himself to racial segregation or other distinctions based on race or color.

Sec. 602. The undertaking referred to in section 601 shall contain such appropriate terms and conditions as the head of the department or agency granting the assistance may prescribe. The United States district courts shall have jurisdiction of civil actions brought in connection with such undertakings by either the United States or by any recipient aggrieved by action taken under any such undertaking, but no court shall issue an order or injunction restraining a breach of those provisions of the undertaking which are designed to carry out the policy set forth in paragraphs (1) and (2) of section 601.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

Title VII is in reality the so-called FEPC bill, H.R. 405, reported from the House Education and Labor Committee on July 22, 1963, now pending before the Rules Committee of the House.

The only major difference between the subcommittee version (H.R. 405) and the compromise version is that the enforcement procedure was changed from the administrative type of cease and desist order to a de novo proceeding in court initiated by the Commission. In essence, this was the approach and the provisions of a similar bill, H.R. 10144, reported in February of 1962 by the House Education and Labor Committee in the 87th Congress.

The Judiciary Committee or its subcommittee held no hearings on the language of title VII. Representatives of neither industry nor labor had their day in court before the Judiciary Committee and the Judiciary Committee members had no part in producing the phraseology title VII contains.

The title creates a new Federal independent agency similar to the National Labor Relations Board; deals in an area of legislative jurisdiction assigned to another committee of the House (House Education and Labor Committee); will have far-reaching consequences on both management and labor; contains onerous provisions for recordkeeping, inspection, and reporting; and constitutes an important but ill-devised limitation upon the area of discretion and decisionmaking of both American businesses and American workers. Such an important innovation in Federal activities should not be undertaken casually and upon a flimsy record.

The undersigned would support legislation to prevent discrimination in employment by the Federal Government or in the execution of contracts let by the Federal Government. This function is at present being performed under an Executive order of the President—10925, March 8, 1961, 26 F.R. 1977—by the President's Committee on Equal Employment Opportunity.

The undersigned believes there are valid reasons for having this function of nondiscrimination in Federal employment and contracts established on a statutory foundation and thus not subject to revoca-

tion or modification at the whim of succeeding Executives. Any doubt about the validity of promulgating such far-reaching national policy by Presidential action not founded upon any statutory grant of authority would be removed.

The study of the undersigned of this problem at this stage would seem to indicate that the responsibility of providing equal treatment without regard to race or color with respect to Federal employment would properly be vested in the Civil Service Commission by appropriate amendment to the Civil Service Act.

Likewise, it would appear that the prevention of discrimination with respect to Federal Government contractors could appropriately be achieved by requiring them to enter into an enforceable undertaking and relying upon the body of law providing remedies for the violation of contracts for enforcement.

The undersigned had contemplated offering an amendment as a substitute for title VII, embodying these principles, but time limits for the filing of these views precluded completion of the study required to fashion appropriate legislative language to this end.

In the light of these circumstances and the relatively brief experience of the operation of the Presidentially-established Equal Employment Opportunity Commission, action in this field might wisely be postponed pending further experience in the operation of the Presidential Commission and further study of appropriate statutory provisions in this area.

Therefore, title VII should be deleted.

TITLE VIII. REGISTRATION AND VOTING STATISTICS

This title contemplates that the Bureau of the Census under the Secretary of Commerce will assemble statistics on registration of persons to vote and make a determination whether or not persons are excluded from registering and voting by reason of race, color, and national origin.

The objective of this title is identical with the amendment the undersigned proposes to offer to "Title I. Voting Rights," namely, to carry out the mandatory provisions of section 2 of the 14th amendment requiring the reduction of representation in the House of Representatives of those States where there is denial or abridgment of the right to vote.

The Bureau of the Census performs primarily ministerial and administrative functions and employs as census takers persons without special qualifications, such as legal training, for whom it would be very difficult to make a determination which would be reliable that a person failed to register or to vote because of denial or abridgment, or simply because of indifference or some other reason.

It was for that reason that the undersigned suggested that the effective way to meet this problem was the establishment of a bipartisan congressional commission with factfinding powers to build a body of evidence and to report its recommendations and its calculations to the Congress which has the ultimate responsibility for carrying section 2 of the 14th amendment into execution. Since the commission is the more workable and effective instrumentality, title VIII should be deleted.

TITLE IX. PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

This title provides that an order remanding a civil rights case to the State court from which it was removed "shall be reviewable by appeal or otherwise." This title received only the most cursory consideration in the subcommittee and none at all in the full Judiciary Committee. Its ramifications are unknown.

By granting an appeal from a remand order of the Federal court in civil rights cases, but not in any other cases, it is possible that dilatory tactics and repeated appeals might frustrate the execution of State laws.

Until further study has marked out more precisely the effect of title IX, action by the Congress should be withheld.

TITLE X MISCELLANEOUS

Many States have statutes in the field of civil rights aimed at prohibiting discrimination on the grounds of race or color. For example, 32 States have public accommodation laws.

Under the Nelson decision of the Supreme Court, it is entirely possible that the adoption of a broad omnibus civil rights bill by the Congress could be interpreted by the courts as preempting the field of civil rights for the Federal Government and, in consequence, all laws of States aimed at preventing or punishing discrimination would be held invalid.

In a limited way, in some of the titles of H.R. 7152 there is an attempt to preserve to individuals rights under State laws. In the opinion of the undersigned, these provisions are wholly inadequate to preserve the validity and force of State laws aimed at discrimination. Therefore, the undersigned proposes to offer an amendment to title X applicable to all the provisions of H.R. 7152 which would clearly announce that it is not the intent of Congress to preempt the field of civil rights and thus preserve the State statutes and municipal and other ordinances adopted or to be adopted in the field of civil rights, unless they are in direct conflict with Federal laws on the same subject.

The text of the amendment the undersigned will offer is as follows:

> SEC. 1001. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which such title operates, to the exclusion of any State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating a provision of State law which would be valid in the absence of such Act, except to the extent that there is a direct and positive conflict between such provisions so that the two cannot be reconciled or consistently stand together.

GEORGE MEADER.

ADDITIONAL VIEWS OF HON. CARLETON J. KING

In order for society to achieve stability and growth, the law provides for a balance between the rights of its citizens and the rights of the State. The balance in the United States today is being threatened with upset from both sides. The march toward stability and growth, justice and equality, in recent years has been slowed if not halted in the area of civil rights.

Enforced segregation has long deprived the Negro of rights and privileges, which in justice, are his. In the basic area of education, employment, housing, and voting, oppressive conditions have prevented him from exercising his full human rights. As a direct consequence of this segregation and as a result of his pent-up frustrations, violence has been engaged in by some Negro groups. This in turn, has occasioned counterviolence by white groups in both the North and South, who are bent upon resisting change.

In reacting to this growing violence, is the arm of the Government, both State and Federal, taking positions which either protect the "in-group" or go too far toward upsetting the "in-group." The result will be the strengthening of Government controls, and particularly Federal control vis-a-vis the right of individuals, Negroes and whites.

In some societies, these forces constantly contend back and forth, thereby creating upheaval and unrest. In a democratic society, such as ours, however, a buffer force stands in the middle, which is in a position to accede to the reasonable demands of the individual while tempering the demands for the power of Government. In the United States, this buffer is best represented by Congress, which acts as part of the Government, while maintaining a protective eye upon the interest of the public. For this reason, Congress must accept its primary responsibility for dealing with the major cause of the unrest in the country today—civil rights.

Congress has struggled with the problem for many years now and will undoubtedly continue to do so for many years to come. Pursuing the policy of balanced forward progress, Congress enacted civil rights legislation in 1957 and 1960. Aside from meeting the challenge of the voter disenfranchisement, these acts created the Civil Rights Commission, reduced the threat of widespread violence, and accomplished other results. The fact that substantial gains did materialize under these acts and did remove many unjust burdens under which the Negro has so long labored, new aspirations and renewed hope began to attract increased support.

To meet these hopes and aspirations, a large number of Republicans in the House and Senate introduced legislation in the beginning of the 88th Congress, which provided for increased voting protection, school desegregation, equal employment opportunities, and many additional measures. On June 19, 1963, the President transmitted to the Congress his message on civil rights, asking for legislation, which resulted in the introduction of the administration's omnibus

civil rights bill, H.R. 7152. Considerable time could be directed to the irregular considerations of H.R. 7152 by the subcommittee and full committee. This is well documented in other views contained in this report; and due to the limitation of time, I will not comment specifically on this matter.

What I do wish to stress, however, is that the provisions of the substitute bill were never sufficiently debated either from a legal standpoint or from their social, economic, and political ramifications. The bill does contain features, in my mind, that properly meet the needs and demands of the Negro. Nevertheless, there are other provisions, which I believe usurp the rights of many citizens or which extend too great authority to the Federal Government. My fear, as expressed in the opening remarks, is that the inclusion of these overly forceful provisions will contribute to the upset in balance in our present-day society, which I believe Congress must guard against.

Our democracy is not perfect. Imperfections exist, but thankfully its virtues exceed those of any other system ever tried. As long as democracy gives to all its people the right to equal learning, the right to equal employment, the right to equal treatment, the right to equal justice, the right to adequate housing, and the right to vote, we will continue to solve the basic equality problems of our country.

Respect for these personal rights is not only a matter of individual moral duty, it is also a matter of civic action. My chief concern, as a Member of Congress, and as a member of the Committee on the Judiciary, is to do what I possibly can to insure that these rights are acknowledged, respected, and coordinated with the rights of others and to correct any unjust discriminatory practices against any group or class. I believe it is also my responsibility in seeking lawful rights for any minority group in America to also respect the lawful rights of others.

Because of the manner in which this substitute was steamrollered through the full committee without debate, study, or explanation, I hope the House will give careful consideration to all its provisions and fully consider all amendments to the end that justice will prevail.

CARLETON J. KING,
Member of Congress.

ADDITIONAL VIEWS OF HON. ARCH A. MOORE, JR.

The right to be free from all forms of racial intolerance is so fundamentally the privilege of each and every citizen of the United States that it cannot be made the plaything of politics. The shame of our times, however, is that the subject of civil rights has from the early days of the 88th Congress been made the butt of political opportunism. It was only after public pressure began to mount, however, did the administration stir itself to fashioning a civil rights package. This game of lonemanship by the administration was further spotlighted when the subcommittee of the House Judiciary Committee reported a bill which the committee chairman was forced to label the bill "drastic" irrespective of the fact that it was his bill. The fog of indecision and the quagmire of inaction became so great when the Judiciary Committee began to debate the subcommittee's bill, that the prospects for civil rights legislation faded to all but the vanishing point. Amendments were offered and withdrawn. Signals were called and then missed. Coalitions formed and then dissolved. Pleas of assistance were made and rejected. To rescue this hopeless mess, then, a motion was made to report the subcommittee bill to the House in an effort to salvage civil rights and to permit the Congress to work its will on this most needed subject. But, although majority support existed for this course of action, a "compromise" bill was sprung upon the committee from out of the night. Where it came from or who were its benefactors remains to this day a deep, dark secret. The bill reported was conceived in segregation, born in intolerance, and nurtured in discrimination.

As I have stated earlier, civil rights is the foremost issue of our times. But, to attempt to enact civil rights legislation in the heavyhanded and politically motivated manner that is presently being attempted is a disservice to the democratic process and a disservice to all citizens who want and expect effective legislation in this Congress.

ARCH A. MOORE, JR.,
Member of Congress.

MINORITY REPORT UPON PROPOSED CIVIL RIGHTS ACT OF 1963, COMMITTEE ON JUDICIARY SUBSTITUTE FOR H.R. 7152

HISTORY OF THE LEGISLATION

This legislation is being reported to the House without the benefit of any consideration, debate, or study of the bill by any subcommittee or committee of the House and without any member of any committee or subcommittee being granted an opportunity to offer amendments to the bill. This legislation is the most radical proposal in the field of civil rights ever recommended by any committee of the House or Senate. It was drawn in secret meetings held between certain members of this committee, the Attorney General and members of his

staff and certain select persons, to the exclusion of other committee members.

Sometime prior to October 22, 1963, Subcommittee No. 5 of the Judiciary Committee of the House of Representatives had prepared a substitute bill for H.R. 7152. Title I of the substitute was read and discussed by the full Judiciary Committee prior to October 22, and at a meeting held on that date a motion was made by the gentleman from West Virginia to report the subcommittee substitute to the House of Representatives. Before final action could be had on this motion, a point of order was made that the House of Representatives was then in session. The chairman of the committee called a meeting for the following morning, the 23d, and then on the 23d, within an hour of the time of the meeting it was postponed to the 24th, and then on the 24th, a short while before the meeting was scheduled, it was postponed again, and later postponed to Tuesday, October 29. These various postponements were made by the chairman without any prior consultation with any of the signers of this report.

On October 29, the full committee met at 10:30 a.m. The motion of the gentleman from West Virginia was promptly voted down, after which Chairman Celler offered a 56-page mimeographed substitute which he described as an amendment and moved that the committee approve the bill. The chairman announced that he would recognize a member of the committee to move the previous question and in it were ordered that no amendments could be offered to his proposal; no debate had; and no questions asked or answered.

The bill was, upon order of the chairman, read hastily by the clerk, without pause or opportunity for amendment. Several members of the committee repeatedly requested to be permitted to ask questions, have an explanation of the bill, discuss it, consider its provisions, and offer amendments. The Chair refused to grant such requests or to recognize these members of the committee for any purpose. After the reading of the bill in the fashion hereinabove described, the chairman announced that he would allow himself 1 minute to discuss the bill, after which he would recognize for 1 minute the ranking minority member, the gentleman from Ohio. This was an ostensible attempt to comply, technically, with the rules of the House but did not amount to debate, as debate is generally understood. Neither of these gentlemen discussed the bill for more than 1 minute; both of them refused to yield to any other member of the committee; and neither of them debated the bill nor discussed it in any fashion other than to say that they favored it. They made no effort in the 2 minutes consumed by both together to even so much as explain the provisions of the bill. In short, there was no actual debate or even any opportunity for debate.

Immediately upon the conclusion of the remarks from the gentleman from Ohio, the ranking minority member, the chairman recognized a member of the committee friendly to the chairman's proposal who moved for the previous question. The clerk of the committee immediately called the roll upon the motion to approve the bill and before the tally could be completed or the vote announced, the House was in session. The committee met later in the afternoon and, the tally of vote upon the motion to approve the bill having been completed and announced at the morning meeting after the House session had commenced, a motion was made and adopted that H.R. 7152 be re-

ported to the House. The chairman treated the vote taken upon the bill at the morning session as being valid.

The signers of this minority report in reciting these facts relating to the procedures employed in the full committee do not do so in any captious spirit, but relate these facts to inform the Congress of the tactics employed to bring this bill before the House.

GENERAL NATURE OF THE LEGISLATION

As stated above, the full-committee substitute for H.R. 7152 was railroaded through the Committee on the Judiciary without an opportunity by members of that committee to discuss, debate or amend the 56-page mimeographed document. While this document was being forced through the committee wholly without study, it was hailed as "moderate" legislation and as a "compromise" when in truth and in fact it was no less extreme and vicious than the subcommittee proposal. In coordination with these statements, the reported bill was denounced, publicly, by civil rights political pressure groups for the apparent purpose of creating the impression the substitute measure was, in fact, a "watered down" version of the unacceptable subcommittee proposal.

Now that we, as members of the committee, have had some opportunity to compare the reported bill with the subcommittee proposal, we find that the bill, as reported, is no compromise at all. It actually broadens and strengthens many powers conferred upon the Attorney General in the subcommittee proposal and grants new sweeping and unlimited authority to the President, while retaining all of the most viscious and harsh provisions of the subcommittee proposal.

Throughout this entire report the construction we have placed upon the provisions of the reported bill are based upon that which we believe will be advanced by the administration, evidenced by numerous Executive orders, other administrative actions and statements of officials in the executive branch of the Federal Government. We do not mean to say that such construction is necessarily correct or that the powers granted are constitutional. Broad, obscure, and undefined wording is repeatedly used in the bill.

The reported bill is not a "moderate" bill and it has not been "watered down." It constitutes the greatest grasp for executive power conceived in the 20th century.

We hereinafter analyze in detail each title of the reported bill and compare it to the subcommittee proposal.

The majority report states, "The bill, as amended, is designed primarily to protect, and provide more effective means to enforce the civil rights of persons within the jurisdiction of the United States." In truth and in fact, the bill, under the cloak of protecting the civil rights of certain minorities, will destroy civil rights of *all* citizens of the United States who fall within its scope. Congress would abnegate its duty to consider and protect all of the Nation's citizens.

If the proposed legislation is enacted, the President of the United States and his appointees—particularly the Attorney General—would be granted the power to seriously impair the following civil rights of those who fall within the scope of the various titles of this bill:

1. The right of freedom of speech and freedom of the press concerning "discrimination or segregation of any kind" "at any establishment or place", as delineated in the bill (secs. 202–203).

2. The right of homeowners to rent, lease, or sell their homes as free individuals (secs. 601–602).

3. The right of realtors and developers of residential property to act as free agents (secs. 601–602).

4. The right of banks, savings and loan associations and other financial institutions to make loans and extend credits in accordance with their best judgment (secs. 601–602).

5. The right of employers "to hire or discharge any individual" and to determine "his compensation, terms, conditions, or privileges of employment" (title VII).

6. The seniority rights of employees in corporate and other employment (title VII, title VI via sec. 711(b)).

7. The seniority rights of all persons under the Federal civil service (sec. 711(a)).

8. The seniority rights of labor union members within their locals and in their apprenticeship programs (title VII, title VI via sec. 711(b)).

9. The right of labor unions to choose their members, to determine the rights accorded to their members, and to determine the relationship of their members to each other (title VII, title VI via sec. 711(b)).

10. The right of farmers to freely choose their tenants and employees (title VI and title VII).

11. The right of farm organizations to choose their members, to determine the rights accorded to their members, and the relationship of their members to each other (title VI and title VII).

12. The right of boards of trustees of public and private schools and colleges to determine the handling of students and teaching staffs (title IV, title VI, title VII).

13. The right of owners of inns, hotels, motels, restaurants, cafeterias, lunchrooms, soda fountains, motion picture houses, theaters, concert halls, sports arenas, stadiums and other places of entertainment to freely carry on their businesses in the service of their customers (title II, title VI, and title VII).

14. The right of the States to determine the qualifications of voters in all Federal elections and many State elections (title I).

15. The right of litigants to receive evenhanded justice in the Federal courts; this legislation places civil rights litigants (*particularly the Attorney General*) in a special category with preferences and advantages not afforded parties in any other form of litigation (sec. 101(d), title IX).

In brief, the proposed bill now reported to the House by the committee does the following:

1. Amends every Federal statute setting up or appropriating money for any program or activity involving Federal financing by a mandatory requirement that every Federal department and agency "shall take action to effectuate" the purposes of the act (secs. 601–602). Persons with less than 25 employees are not excepted from this title of the bill. This makes available to the President and his chief law enforcement officer, the Attorney General, enormous and unlimited funds for sociological manipulation in the field of civil rights.

2. The various definitions contained in the bill, particularly titles II and VII, would extend "interstate commerce" so as to encompass substantially all intrastate commerce and thus bring under Federal control all phases of commerce, whether interstate or intrastate. Actions of any persons under color of local custom or usage, or which are encouraged, fostered, or required by any State or political subdivision thereof are classified as "State action" and subject to Federal control. This authority, if granted, would extend Federal control into the business and the home of almost every individual in the United States (secs. 201 and 202).

3. The reported bill creates an Equal Employment Opportunity Commission to police and control the hiring, discharge, and terms of compensation, conditions and privileges of employment of all persons employed by any business or industry "affecting commerce" and which has 25 or more employees (title VII). The administration's original bill was much more limited, in that it applied only to employers involved in programs and activities financially assisted by the Federal Government. The Commission is to be supported by $2,500,000 for the first year and $10 million per year thereafter. The power granted by this title, if invoked, would destroy seniority in unions, corporate employment and apparently in civil service. Precedents destroying seniority have already been set in limited fields by Executive orders and administrative regulations. The exception of employers who have less than 25 employees (the exception is fixed at 100 employees for the first year and 50 employees for the second year) does not apply to those participating in any program or activity receiving Federal financial assistance by way of grant, contract, or loan under title VI coupled with section 711(b).

4. The reported bill draws under Federal control inns, hotels, motels and other lodging houses, restaurants, cafeterias, lunchrooms, soda fountains, gasoline stations, motion picture houses, concert halls, theaters, sports arenas, stadiums, and other places of exhibition and entertainment. It also includes *any other* establishment located within the premises of a covered establishment or on the premises of which a covered establishment is located (title II). It destroys the right of owners of such establishments to serve whomsoever they please. If this action is proper, it should logically apply across the board. Hence the exception of lodging establishments actually occupied by the proprietor which contain not more than five rooms for rent is clearly included for political purposes. This constitutes one form of discrimination.

5. A combination of (*a*) conferring new powers upon the U.S. Commissioner of Education (title IV), (*b*) requiring action by every agency and department of the Federal Government administering activities or programs involving Federal financial assistance (title VI), and (*c*) granting unlimited authority to the President to take whatever action he deems to be appropriate concerning employment in such programs (sec. 711(b)), results in the following: Public and private schools and colleges benefiting from any Federal financial program are placed under Federal control in the handling of pupils and the selection of faculty members insofar as they relate to race, color, or national origin and desegregation or discrimination in connection therewith.

6. The bill is designed to divest from State authorities and invest in Federal authorities the determination of the qualification of voters

in all Federal elections and many State elections (title I). It has been framed to include all State and local elections where any Federal election is held as a part thereof. It appears that this title would affect the election of State or local officials in 46 States ("The Book of the States, 1962–63", p. 23–25). These are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

7. The power of the Attorney General to file suits in the name of or in behalf of the United States is broadened so that, if this bill is enacted, such suits could be filed by him affecting voting (under existing authority), "places of public accommodation" (sec. 204), all public facilities (sec. 301), education (sec. 407), and, apparently, all programs and activities assisted by Federal financing (sec. 711(b)).

8. The orderly and usual procedures in litigation in Federal courts are varied to place civil rights actions in a special preferred category (sec. 101(d), sec. 203, sec. 707, and title IX).

The most flagrant and dangerous departure from accepted rules of civil procedure is embodied in title IX. Under existing law, certain civil or criminal actions brought in the State courts may be removed to the Federal court in the district and division in which the action is pending. The law of removal provides that immediately upon the filing of a removal petition by the defendant and the posting of a minimum bond, the State court is divested of jurisdiction to proceed. No process of any kind can issue by the State court, no depositions can be taken, hearings scheduled or in progress must be suspended and the State court is powerless to maintain the status quo. Title 28, section 1447(d) presently provides that an order of remand to the State court is "not reviewable on appeal or otherwise." This enables the State court upon remand by the Federal district court to promptly resume jurisdiction and proceed with the disposition of the cause and the enforcement of its orders. Any Federal questions are reviewable by the Federal courts through regular channels.

Title IX would add to section 1447(d) the words, "except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." Thus the jurisdiction of the State courts (in these cases alone) could be nullified for months by the simple filing of a petition to remove, followed by an *adverse* order of the U.S. district court, even though followed by an *adverse* judgment of the U.S. court of appeals upon the appeal. This seemingly simple amendment would permit the whim of the civil rights litigants (*and none other*) to destroy the efficacy of State courts. For all of the years past this right has been reserved to the U.S. district courts, on the motion to remand, and not to the litigant.

It should be noted that the administration bill contained references to "racial imbalance" in connection with desegregation in public education. The subcommittee proposal and the reported bill have omitted this reference. It appears that this action is a matter of "public relations" or semantics, devised to prevent the people of the United States

from recognizing the bill's true intent and purpose. Ostensibly, the administration intends to rely upon its own construction of "discrimination" as including the lack of racial balance, as distinguished from a statutory reference to "racial imbalance." A study of the 1961 "Report of the U.S. Commission on Civil Rights," recent Executive orders, and regulations proposed by the Secretary of the U.S. Department of Labor demonstrate that the omission of this reference is upon the theory the same is not necessary to carry out the intention of the administration. The discussion herein is founded upon this assumption.

The method which the administration intends to employ to attain "racial balance" is illustrated by the standards proposed by the Secretary of Labor on October 25, 1963, pursuant to 29 U.S.C. 22, concerning union apprenticeship programs. These standards require, "The selection of apprentices on the basis of qualifications alone * * * unless the selections otherwise made would themselves demonstrate that there is equality of opportunity," and *"The taking of whatever steps are necessary,* in acting upon application lists developed prior to this time, *to remove the effects of previous practices under which discriminatory patterns of employment may have resulted."*

It will be noted that the word "discrimination" is nowhere defined in the bill.

The destruction of individual liberty and freedom of choice resulting from the almost limitless extension of Federal Government control over individuals and business, rather than being in support of the Bill of Rights, is directly contrary to the spirit and intent thereof.

Judge Learned Hand, in 1958, said in his "Oliver Wendell Holmes Lectures":

> * * * the Bill of Rights is concerned only with the protection of the individual against the impact of Federal and State law.

Dean Roscoe Pound, dean emeritus of Harvard University School of Law, said in 1957 in his "The Development of Constitutional Guarantees of Liberty":

> Analytically the bills of rights are bills of liberties. They define circumstances and situations and occasions in which politically organized society will keep its hands off and permit free, spontaneous, individual activity; they guarantee that the agents and agencies of politically organized society will not do certain things and will not do certain other things otherwise than in certain ways.

In determining whether this bill should be adopted, it must be remembered that when legislation is enacted designed to benefit one segment or class of a society, the usual result is the destruction of coexisting rights of the remainder of that society. One freedom is destroyed by governmental action to enforce another freedom. The governmental restraint of one individual at the behest of another implies necessarily the restriction of the civil liberties and the destruction of civil rights of the one for the benefit of the other. This legislation, then, brings to mind the wise statement of George Washington:

> Government is not reason, it is not eloquence—it is force. Like fire, it is a dangerous servant and a fearful master.

EFFECT OF THE LEGISLATION

The depth, the revolutionary meaning of this act, is almost beyond description. It cannot be circumscribed, it cannot be said that it goes this far and no farther. The language written into the bill is not of that sort. It has open-end provisions that give it whatever depth and intensity one desires to read into it. In the language of the bill, "The President is authorized to take such action as may be appropriate to prevent * * *" (sec. 711(b)), and "Each Federal department and agency * * * shall take action to effectuate * * *" (sec. 602). This vests, of course, almost unlimited authority by the President and his appointees to do whatever they desire.

It is, in the most literal sense, revolutionary, destructive of the very essence of life as it has been lived in this country since the adoption of our Constitution. Because this is true, the undersigned members of this committee believe it wise to demonstrate, by example, the effects of this legislation on people; to demonstrate, by example, the meaning of lost liberty; to demonstrate, by example, the power in this bill to completely dominate the lives of even the least of us.

To this end, there follow nine examples of the effect of the bill upon persons covered by it. There might be offered innumerable examples, because this bill encompasses directly or indirectly nearly every American.

Farmers

For more than 30 years, the American farmer has been under Federal regulation in many programs involving financial aid. Whether these regulations have served him well or poorly is a matter of divided opinion. In any event, regulation per se is nothing new to the farmer. *But this is a different kind of control. It is not related to the purposes for which the financial aid was rendered.*

If this bill is enacted the farmer (regardless of the number of his employees) would be required to hire people of all races, without preference for any race. If experience has taught the farmer that a member of one race is less reliable than a member of another race, does less for his pay, he will no longer be allowed to hire those he prefers for this reason. If he is of the belief that members of one race are more prone to accident, less trustworthy, more neglectful of duties, are, in short, less desirable employees than those of another race, he will no longer be allowed to exercise his independent judgment. Under the power conferred by this bill, *he may be forced to hire according to race*, to "racially balance" those who work for him *in every job classification* or be in violation of Federal law.

The penalty for such violation can mean being excluded from every direct and indirect Federal "benefit." It can mean the calling of his bank loans, being shut off by blacklisting from the agencies of Government that recruit labor, the right to purchase supplies from farmer-associated businesses which may, themselves, be dependent in one degree or another on Federal financial assistance. In short, he will become a pariah, an outcast. He will employ those people a Federal inspector says he shall employ or his farm will be deprived of every vestige of Federal "aid," without which few farms, today, can successfully operate.

The agencies required to police farmers, under the directions of the Attorney General and the Commission on Civil Rights, are all

(1) banks for cooperatives, (2) Federal land banks, (3) Federal intermediate credit banks, (4) production credit associations, (5) the Agricultural Stabilization and Conservation Service, (6) the Commodity Credit Corporation, (7) the Federal Crop Insurance Corporation, (8) the Agricultural Marketing Service, (9) the Farmers' Home Administration, (10) the Soil Conservation Service, and *all other* agencies or departments having to do with Federal financial assistance in the field of agriculture.

Homeowners

The right of homeowners in the United States to freely build, occupy, rent, lease, and sell their homes will be destroyed by this bill. Title VI will be construed by the administration to cover "land to be developed for residential use" and "the sale, leasing, rental, or other disposition of residential property and related facilities * * * or the occupancy thereof," whenever there is involved FHA or GI financing, financing by a national bank or any bank or savings and loan association covered by the FDIC or any other type of Federal financial support. The quotations are from Executive Order 11063, mentioned below.

Federal personnel (*not* the homeowner or his wife) will make decisions as to the personnel building the home, the renting of a single room or several rooms, as well as the rental, leasing, or sale of the home whenever race, color, or national origin is concerned. Federal personnel will also dictate the actions of realtors, developers, attorneys, and the lending institutions.

What of the right of property? What if the person who seeks to rent a room, lease or buy a home, is not, in the eyes of the homeowner, trustworthy or desirable? If race, color, or national origin is involved—and, by the nature of things, these *must* be involved—the Federal inspector (not the homeowner or his wife) makes the decision. The alternative—foreclosure, blacklisting, cancellation of any Federal benefits under any program.

Already, without any legislative authority whatsoever, the President has issued Executive Order 11063 dated November 20, 1962, purporting to put all of the above into effect concerning an estimated 30 percent of the homebuilding in the United States. *This has been done in spite of the fact that Congress, on six different occasions, defeated amendments to then pending housing acts granting the President authority to so act.* If this bill is passed, it will validate that order. Moreover, it will give the President carte blanche to subject every homeowner to Federal control.

Banks and bankers

A dispassionate study of the power granted in this bill will convince a reasonable person that no bank could operate under its provisions without undue hardship.

If a bank under this bill were to deny employment, a loan, a line of credit or a sales contract to a person, it would have to prove its decision was based on facts that did not, in any way, discriminate against the rejected applicant because of his race. Among the penalties that could be imposed on the bank would be the *cancellation of the bank's Federal deposit insurance and its right to handle GI, FHA, and other Government-insured money.* The power granted in the bill goes further. If a small businessman, for instance, has been held in violation of the

Federal civil rights law, under the provisions of this bill *the bank can be required to cease doing business with the culprit*, or else lose its FDIC protection for all its customers.

To illustrate, assume a bank extends a line of credit to finance construction of an apartment house. Assume a tenant is denied the privilege of leasing one of the apartments because his credit or character, in the opinion of the management, would make him an undesirable tenant. If the Federal inspector decided this amounted to discrimination, the FHA guarantee could be canceled.

The agencies *required* to police banks and bankers, under the direction of the Attorney General and the Commission on Civil Rights, are all national banks, the Federal Deposit Insurance Corporation, the Federal Reserve System, the Federal Housing Administration, FNMA, and all similar agencies.

Among the institutions and agencies which would be required to conform to the act and police business and professional establishments are all banks, savings and loan associations, and other financial institutions served by the FDIC or the Federal Reserve System, the agencies administering GI, FHA, FNMA, SBA, and all other loans and programs involving Federal financial assistance. Withdrawal of protection or credit, foreclosure of loans, blacklisting, and similar sanctions may be expected.

Labor unions and members

To millions of working men and women, union membership is the most valuable asset they own. It is designed to insure job security and a rate of pay higher than they otherwise would receive. As none knows better than the union member, himself, these two benefits are dependent upon the system of seniority the unions have followed since their inception. Seniority is the base upon which unionism is founded. Without its system of seniority, a union would lose one of its greatest values to its members.

The provisions of this act grant the power to destroy union seniority. The action of the Secretary of Labor already mentioned is merely the beginning, if this legislation is adopted. With the full statutory powers granted by this bill, *the extent of actions which would be taken to destroy the seniority system is unknown and unknowable.*

To disturb this traditional practice is to destroy a vital part of unionism. Under the power granted in this bill, if a carpenters' hiring hall, say, had 20 men awaiting call, the first 10 in seniority being white carpenters, the union could be forced to pass them over in favor of carpenters beneath them in seniority, but of the stipulated race. And if the union roster did not contain the names of the carpenters of the race needed to "racially balance" the job, the union agent must, then, go into the street and recruit members of the stipulated race in sufficient number to comply with Federal orders, else his local could be held in violation of Federal law.

Neither competence nor experience is the key for employment under this bill. Race is the principal, first, criterion.

Specific penalties are provided for violation of this bill (title VII). However, in addition, the President "is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice" in connection with title VI of the bill (sec. 711(b)). This, of course, amounts to practically unlimited authority. Unions held in violation of this bill may lose their rights

and benefits under such labor statutes as the National Labor Relations Act, the Railway Labor Act, the Davis-Bacon Act, the Walsh-Healey Act, and other legislation beneficial to labor. Representation rights and exclusive bargaining privileges could be canceled. Unions could be denied access to NLRB or National Mediation Board procedures.

Moreover, this bill affects unions from the other end, that of the employer, since the law applies to the employer, as well. It extends to railroads, motor carriers, airlines and steamship companies handling mail or other Government shipments, enterprises receiving loans from the Small Business Administration, construction contractors financed through FHA or GI home loan insurance, the rural electrification program and practically all others (secs. 601, 602).

Consequently, however meticulous a local union may be as pertains to *its* racial practices, if a contractor, for example, has been adjudged guilty of discrimination and must, therefore, hire 100 or 1,000 workers of a given race—in preference to all others—before his job becomes "racially balanced," it means the local which supplies his labor can send him only union members of that particular race—and the members of other races will sit until that number has been employed. If the union does not have among its membership the number required, it must recruit membership of that race to supply the contractor's needs. This is a specific instance of the Federal Government interfering in the contract rights of unions and employers.

By threat of contract cancellation and blacklisting, contractors could be forced to actively recruit employees of a specified race and upgrade them into skilled classifications, although this would displace union members in the skilled trades. Where skilled tradesmen of the specified race were not available from union sources, the agency could direct that they be recruited from nonunion sources, notwithstanding existing union shop or exclusive referral agreements.

Individuals at work

Union members are not the only working people affected by this bill. All employees of private industry and apparently those under Federal civil service will be affected. Assume that a nonunion individual is employed by a corporation which has more than 25 people on its payroll (title VII), or is employed by a smaller corporation which has an SBA, FHA, or other federally supported loan or contract (title VI, sec. 711(b)). Assume that his firm, in his job classification, historically has employed people only of his particular race, whatever that race may be. Assume that a demand is made that his firm abide by a Federal regulation requiring racial balance in his department. To comply—unless unneeded employees are to be hired—somebody has to go. Who?

Assume two women of separate races apply to that firm for the position of stenographer; further assume that the employer, for some indefinable reason, prefers one above the other, whether because of personality, superior alertness, intelligence, work history, or general neatness. Assume the employer has learned good things about the character of one and derogatory things about the character of the other which are not subject to proof. If his firm is not "racially balanced," under such regulation he has no choice, he must employ the person of that race which, by ratio, is next up, even though he is

certain in his own mind that the woman he is not allowed to employ would be a superior employee.

That such mandatory provisions of law approach the ludicrous should be apparent. That this is, in fact, a not too subtle system of racism-in-reverse cannot be successfully denied.

Hotels, restaurants, and theaters

Places of "public accommodation" do not cater by custom to one race in preference to another solely from proprietary preference. People are in business to make money and in certain areas they have learned, or have reason to believe, it is more profitable to serve only one race or another. In other areas, proprietors have learned it is more profitable to serve all races, indiscriminately. A host follows the customs of his community else he suffers, economically.

To force him to abandon his practice, to run counter to prevailing opinion, is to injure his business and his property. He does not, and he cannot, set custom. He follows it or suffers.

Under the provisions of this bill, the proprietor's right to decide whom he will or will not serve, as that decision pertains to race, color, religion, or national origin, is stripped from him (title II). Moreover, if a customer proves objectionable, the owner can have him removed from his premises only at peril of being in violation of the race laws. For, under this act, the proprietor, if challenged, must prove he did not remove the objectionable customer because of his race, but because of some other reason. This is a perversion of the basic principles of our law.

But a proprietor's trials as they pertain to customers are only the beginning of problems which will be engendered if this bill becomes effective. His problems with employment of personnel may well go far beyond anything heretofore confronting the businessman.

How can a restaurant operate successfully if its owner is not given freedom of choice in the selection of waiters, chefs, and cashiers? Although a restaurant serves, and advertises as its specialty, genuine southern dishes, under this bill the owner could not hire only Negro chefs if covered by sections 601, 602 or title VII. (See Labor Standard, p. 12.) He could not, even though the success of his business depended on such chefs; even though his patronage was built upon the belief the food was being prepared by Negro chefs whose culinary art with "southern" specialties is world renowned. He could be forced instead to hire in a "racially balanced" manner—so long as the potential employee had a modicum of skill—else be in violation of law. And a modicum of skill, it need not be added, is insufficient to attract clientele to a restaurant whose reputation is built upon the culinary art of southern Negro chefs.

The press

Race, as the first criterion of employment for newspapers, periodicals, radio and television, applies under this bill, as well as for other elements of our commerce. If a job applicant can write and there is an opening and if he is of the race called for to balance the makeup of the staff, that person must be employed in preference to someone of another race.

What such employment practices would do to the character of the newspaper or program is immediately apparent to those who earn their living in the world of mass media. Yet that is the sense of this

bill. The bill grants the power to make it mandatory that the staff of a newspaper be thoroughly integrated, racially and religiously, else else the owners are in violation of Federal law.

If the owners of a television station prefer an announcer of a certain race to enunciate its commercials, it is denied that choice. Announcers, as well as commentators, actors, and supporting staff, must be racially balanced, despite the fact the use of members of a certain race may, demonstrably, cause diminished sales to both station and sponsor.

Even so, this destruction of the right of free choice, serious as it is, is not the most fearsome feature of this bill as it applies to the press.

Title II, section 203, says: "No person shall * * * incite or aid or abet any person to do any of the foregoing," i.e., deny or attempt to deny any person any right or privilege described in the title.

Read that language as you will, if this becomes the law it means that no editor could with impunity editorialize in opposition to its provisions.

If a citizen takes a position in direct opposition to some provision of this title and a newspaper writes an editorial in support of that position, indeed, urges others to take similar stands, is that newspaper inciting, or aiding, or abetting? It would seem so (sec. 203(a)(e)).

The fact of the matter is this: If a person stands in a public square or before a civic club and advocates that segregation is best for either race and urges that it be maintained—and his stand is editorially supported by a newspaper—*both* would be in violation of Federal law and *both would be subject to fine and imprisonment* (sec. 202, 203(a)(e)), if they continue to exercise freedom of speech and of the press. Under such a circumstance, what becomes of the right of free speech? Or freedom of the press? Of course, this violates all constitutional concepts.

Teachers and schools—Public and private

The proposed legislation ultimately would result in total Federal control of the education processes in the United States.

Under provisions of this bill, the President and his appointees in Federal agencies would have the right to dictate pupil assignments in local schools and to approve the faculties (secs. 601, 602, 711(b), title IV). The alternative would be the loss of all Federal aid (sec. 602). The child who is given lunch through Federal grant must also study under a federally approved faculty. This applies to every school, public or private, benefiting from programs involving Federal aid.

The power contained in this bill to cut off Federal funds is not merely a negative power. Those who have already accepted Federal funds can be compelled, in various instances, by foreclosure, injunction and blacklisting, to meet the current Federal standards (secs. 601, 602, Executive Order 11063).

The bill gives the Attorney General the power to institute school integration suits, not only against individuals but against States and local governments as well (sec. 407). This action gives to one man a power which has never before existed; previously the Attorney General could only intervene in private suits. This new power, needless to add, can affect the rights of local school boards where no parents or pupils have filed any suits. Under this power the de-

fendants could be deprived of the right of trial by jury. In any contempt actions arising out of U.S. suits, local school officials would be tried by the very judge whose order was allegedly disobeyed.

Veterans benefits and social security

Title VI amends every act authorizing veterans benefits, veterans and civil service pensions, health and welfare programs, unemployment compensation, and social security benefits so as to subject them to the controls and sanctions provided in the bill such as *"the termination of or refusal to grant or to continue assistance under such program"* (sec. 602).

Summary of Comparison of the Reported Bill With Subcommittee Proposal Which Was Rejected

We will compare in detail, title by title, the reported bill with the subcommittee proposal which was rejected as extreme and unacceptable. Before doing so, we will make a short comparison of the most radical departures in the reported bill from the earlier administration bills and the subcommittee proposal.

On February 28, 1963, the President transmitted his long-awaited civil rights message to the 88th Congress and on April 4 the chairman of this committee introduced the Civil Rights Act of 1963 as H.R. 5455 and 5456. The legislation thus recommended and introduced included only an extension of the life of the Commission on Civil Rights for 4 years, certain amendments of its duties and the unconstitutional provisions concerning voting later embodied in title I of H.R. 7152, including the temporary voting referee provision. This was the sum and total of the legislation recommended as necessary in the field of civil rights by the President. Every legal, constitutional, and public policy reason which may have existed for civil rights legislation on June 19 also existed on February 28 and April 4. Yet on June 19 President Kennedy transmitted another message to Congress on civil rights and on June 21 there was introduced H.R. 7152 as the administration bill embodying new radical and far-reaching proposals.

Later, even more radical, unconstitutional, and vicious proposals were added in the substitute proposed by Subcommittee No. 5. As the reported bill has been widely hailed as a "moderate" and "watered down" bill, we summarize for the convenience of the House the most far-reaching provisions thereof added to either H.R. 7152 as introduced or to the subcommittee proposal.

1. The reported bill changed the words "any election" in the subcommittee proposal back to the words "any Federal election" used in the administration bill wherever they appeared in title I. However, there was inserted a definition that "the words 'Federal election' shall mean any general, special or primary election held solely *or in part* for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives" (sec. 101(c)). Hence, as detailed elsewhere herein, the reported bill is thus drafted to make the provisions of title I concerning voting applicable to election of State or county officials in 46 States.

2. There was added in the reported bill in section 101(d) the unprecedented provision that, "In any proceeding instituted in any district court of the United States under this section the Attorney

General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case." This did not appear in any previous version of the bill.

3. There was added in the reported bill section 202 which did not appear in any previous version of the bill. This section would make unlawful "discrimination or segregation of any kind on the ground of race, color, religion, or national origin" *"at any establishment or place,"* if either purports to be required by any rule, order, etc., of any State or any agency or political subdivision thereof. This section is not limited to public places or facilities. As hereinafter pointed out, under the penal provisions of section 203, this amounts to an unconstitutional abridgement of freedom of speech, freedom of the press, and attempted Federal control of State and municipal judges and law enforcement officers.

4. The reported bill brings forward the language inserted in the subcommittee proposal, making it the mandatory duty of every Federal department or agency to utilize the funds provided for Federal financial assistance in every program or activity to enforce civil rights requirements (sec. 602). Such mandatory requirement did not appear in the administration bill. The purported "moderation" of the section consisted chiefly of changing words describing such assistance from "by way of grant, contract, loan, insurance, guaranty, or otherwise" to the words "by way of grant, contract or loan." As hereinafter pointed out, those signing this report have not been able to ascertain any program involving Federal "insurance" or guaranty" that does not involve a "contract." Hence this change appears to have little or no effect.

5. The reported bill is drawn to attempt to utilize the dual basis of interstate commerce and "State action" for its regulation of places of public accommodation and to classify such places as subject to governmental regulation, as was the subcommittee substitute (sec. 201). As detailed elsewhere in this report, as to State action the words "authorization, permission or license" have been changed to "custom or usage," and the words "compelled, encouraged, or sanctioned" by a State have been changed to "required, fostered, or encouraged" by action of a State. As to interstate commerce, the reported bill broadens some of the language attempting to make all commerce interstate commerce. There does not appear to be any moderation of this title, but a strengthening of its provisions, with the exception that its coverage has been narrowed to the named establishments and the "catchall" phrases of the subcommittee proposal have been omitted.

6. There has been added to the reported bill a provision as section 711(b) giving the President unlimited powers of enforcement concerning Federal financially assisted programs and activities in relation to the provisions of title VII "Equal Employment Opportunity." This did not appear in the subcommittee proposal. The change from administrative procedures before a board within the Equal Employment Opportunity Commission to proceeding before a master in the Federal district courts is discussed elsewhere herein.

7. As hereinafter detailed, the powers of the Attorney General to file suits in the name of the United States within the scope of the various titles of the bill exceed the powers requested in the administration bill and, in a number of instances, are broadend beyond the subcommittee proposal, but title III of the subcommittee proposal,

extending the right of filing of such suits far beyond the scope of the bill, has been deleted.

8. There are brought forward into the reported bill from the subcommittee proposal numerous provisions attempting to nullify State administrative and court proceedings and giving preference in the Federal courts to civil rights litigants, as hereinafter detailed.

9. The effect of the bill upon public and private schools and colleges (title IV and title VI) has not been "moderated." It has been extended and harshened by the addition of section 711(b), giving the President unlimited powers.

The above summary is subject to the detailed comparison of the reported bill and the proposal of Subcommittee No. 5 which follows.

Comparison of Full Committee Substitute With Subcommittee Proposal Which Was Rejected

TITLE I. VOTING RIGHTS

(1) The reported bill and the rejected subcommittee proposal contain the same provisions designed to divest *from* State authorities and vest *in* Federal authorities the determination of the qualification of voters in all Federal elections and many State elections. Discrimination on the basis of race, color, religion, or national origin is not involved. Both versions:

(*a*) Set up a Federal statutory rebuttable presumption that a person has sufficient literacy, comprehension, and intelligence to vote if he has completed the sixth grade;

(*b*) Provide technical requirements concerning literacy tests;

(*c*) Inhibit the denial of the right to vote for nonpayment of poll tax; and

(*d*) Provide for *Federal* determination as to whether errors or omissions in an application to register are material.

There is no substantial difference in the reported bill and the rejected subcommittee proposal as to these matters.

(2) In other areas, the bill actually goes further than the subcommittee proposal. For instance, it adds in section 101(d) a provision that the Attorney General, himself, may decide whether a proceeding brought under this title should be heard by a three-judge Federal court or by a U.S. district court presided over by a single judge. This is an unprecedented and unwarranted authorization for one litigant—but not the other—to make a choice of courts. It is an attempt to oust the jurisdiction of the U.S. district courts at the will of the Attorney General of the United States.

(3) The bill has omitted two patently unconstitutional provisions which were included in the subcommittee proposal:

(*a*) The requirement that a Federal judge must (without the right to hold a preliminary hearing) appoint temporary voting referees whenever the Attorney General makes specified allegations; and that any persons registered by these referees may vote in any election held prior to the final determination (including any review) of their right to vote.

(*b*) The provision that the Federal statutory determination of voter qualifications and registrations by Federal referees would also apply to all State elections. The subcommittee proposal made the provisions concerning temporary voting referees appli-

cable to both Federal and all State elections and it attempted to have the Federal statute supersede the State statutes as to all State and local elections.

Again the change in the bill is astutely drawn to disguise its full effect. Although the bill refers repeatedly to "any Federal election" and the subcommittee proposal referred to "any election," *the reported bill is cleverly designed to include many State elections.* This is done by including in section 101(c) the definition that "the words 'Federal election' shall mean any general, special, or primary election held solely *or in part* for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the Senate or Member of the House of Representatives." Members of the House of Representatives, Members of the Senate or presidential electors are chosen at the same elections at which State or local officials are elected in 46 States. The bill is worded with the intent to make it applicable to all officers chosen in such elections and hence is applicable to State or local elections in such States.

(4) This title is unconstitutional under article 1, section 2, paragraph 1, of the Constitution of the United States, which provides that electors for Members of the House of Representatives shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. It is unconstitutional as it is in direct contravention of the 17th amendment to the Constitution of the United States, containing an identical provision concerning the electors of the U.S. Senators. It is unconstitutional under article II, section 10, paragraph 2, granting to the legislatures of each State the right to determine the manner of choosing presidential electors. The unconstitutionality of this title is discussed more fully below.

(5) The bill and the subcommittee proposal, both, leave in effect section 2004(e) of the Revised Statutes (42 U.S.C. 1971) as amended, providing for the appointment of voting referees when the court finds the existence of a pattern of practice of discrimination because of race or color.

(6) If this title is adopted it will set a precedent for the extension of Federal control to all material steps in Federal, State, and local elections, as recommended by the U.S. Commission on Civil Rights (pp. 135 to 142, vol. 1, 1961 report):

(*a*) The qualification of voters.
(*b*) The registration of voters.
(*c*) The establishment of voting districts.
(*d*) The holding of elections and the counting of votes.
(*e*) The establishment of electoral districts.
(*f*) The authorization of Federal prosecution (with penalties including fine and imprisonment) of State or local officials who, in the opinion of Federal personnel, are guilty of "any arbitrary act or (where there is a duty to act) inaction in the area of registration, voting, or counting of votes in any Federal election," i.e., complete Federal control of State and local officials.

It should be particularly noted that the Commission recommendations, which this legislation would begin to implement, are for *all* purposes and are not restricted in any degree to discrimination on the basis of race, color, religion, or national origin.

(1) There is no material difference between the reported bill and the subcommittee proposal in the utilization of a dual basis (i.e., interstate commerce and "State action") for the claim of Federal jurisdiction over places of public accommodation. There is no material difference in either bill in the attempt to extend the definition of interstate commerce so as to substantially encompass all intrastate commerce and thus bring under Federal control all such commerce, whether interstate or intrastate. There is no basic or substantial difference in the bill and the subcommittee proposal in the attempt to utilize "State action" to extend Federal control over the actions of individuals. Terminology has been changed in an effort to disguise the actual legal result.

(2) There is no substantial difference between the two in their attempt to extend Federal regulation to include establishments which serve the public as distinguished from establishments in the nature of public utilities. The changes appear to have been made in an attempt to disguise rather than to modify the true intent, purpose, and effect of the legislation.

(3) As mentioned below, the bill omits some of the general and rather vague language which appeared in the subcommittee proposal. This omitted language had been construed as extending the coverage of the proposal far beyond the purpose of this title as stated in the message of the President transmitting the original legislation (H.R. 7152) to Congress. In that message the President said:

> I am today proposing, as a part of the Civil Rights Act of 1963, a provision to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement, and retail establishments.

Within the limits more clearly defined in the reported bill, the controls are broader, harsher, and more vicious than the provisions contained in the subcommittee proposal.

The bill, however, apparently seeks to lull the unwary by limiting its application to inns, hotels, motels, and other lodginghouses, restaurants, cafeterias, lunchrooms, lunch counters, soda fountains, gasoline stations and any retail, wholesale or other establishment within the premises of which a covered establishment is located; all motion picture houses, concert halls, theaters, sports arenas, stadiums, and other places of exhibition and entertainment. It exempts lodging establishments actually occupied by the proprietor which contain not more than five rooms for rent.

(4) The full committee substitute is broader, harsher, and more far reaching than the subcommittee proposal in the following particulars:

(*a*) An establishment is classified in the bill (sec. 201(b)(c)) as engaging in interstate commerce if it "provides lodging to transient guests" or "it serves or *offers to serve* interstate travelers." This *broadens* the coverage provided in the subcommittee proposal which made such classification if the accommodations, goods, and services "are provided *to a substantial degree to interstate travelers*" or if a substantial portion of the goods offered has "moved in interstate commerce." As to the latter requirements

the wording of the bill is, "* * * it serves or *offers to serve, interstate travelers* or a substantial portion of the food which it serves, or gasoline or other products which it sells has moved in commerce." It will therefore be seen that the proposed bill covers any establishment, offering lodging to transient guests, even through it does not have guests traveling in interstate commerce. The bill also covers any establishment which offers to serve interstate travelers even though a substantial portion of the food which it serves, or other products which it sells, has not moved in interstate commerce.

(*b*) The claim of Federal jurisdiction on the basis that individual action constitutes "State action" is brought forward in the reported bill. In fact the terms of the bill are actually broader than the subcommittee proposal which classified individual action as "State action" if the business operates under State or local authorization, permission or license, or the practices of the business are "compelled, encouraged, or sanctioned by the State." The bill substitutes for these words (sec. 201(d)) a classification of individual action as State action if it is carried out not only under color of any law, statute, ordinance or regulation, but if it is carried out under color of "custom or usage." The words of the subcommittee proposal, "compelled, encouraged or sanctioned by the State," have been changed to read, "required, *fostered or encouraged* by the action of a State *or a political subdivision thereof.*" The extension of Federal regulation to cover acts or transactions thus classified as interstate commerce, or as State action, is unconstitutional, being contrary both to the provisions of the Constitution of the United States and the construction thereof by the Supreme Court of the United States, as will be pointed out later.

(*c*) The bill broadens the powers of the Attorney General beyond those which were conferred upon him by the subcommittee proposal. In the subcommittee proposal it was required that before suit could be filed by him, the Attorney General certify that he has received a written complaint under oath from the person aggrieved, plus related requirements. The bill confers authority upon the Attorney General to file such suits *without* the necessity of any complaint, "if he satisfied himself that the purpose of this title will be materially furthered by the filing of the action." Which means, of course, unlimited discretion in the hands of the Attorney General, whosoever he may be.

(*d*) The bill is broadened beyond the subcommittee proposal by the addition of a new section (sec. 202) which was not contained in the subcommittee proposal. This section is not limited to public accommodations or even to public places. It appears to be framed to cover private homes, private swimming pools, private tennis courts, private fishing ponds, and lakes, or other private property. This new section provides that all persons shall be entitled to be free "at any establishment or place from discrimination or segregation of any kind, on the ground of race, color, religion, or national origin, if such discrimination or segregation is, or purports to be, required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

(e) The bill is identical with the subcommittee proposal in a flagrant attempt to have the Federal courts take over the State courts and law enforcement under section 203(c) providing that "No person shall * * * punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202." State and municipal judges, State and local law-enforcement officers would be subjected to Federal actions as violators of Federal statutes whenever it might be claimed that a State arrest or prosecution conflicted with this title.

(5) Both the pending bill and the subcommittee proposal would impair freedom of the press and freedom of speech. This is accomplished by the provision (sec. 203(d)) which provides that "no person shall incite or aid or abet any person to do any of the foregoing." Any newspaper publisher, anyone who writes, publishes, or offers for sale any book or article, any teacher or any person who speaks in favor of segregation affected by the title would be liable to restraining orders, injunctions, citations for contempt with fine or imprisonment as a result, without the intervention of a jury in any case wherein the punishment does not exceed imprisonment for 45 days and a fine in excess of $300 for each "offense".

(6) The bill is identical with the subcommittee proposal in the provision—apparently inserted to promote litigation—that "the prevailing party," other than the United States, may be awarded a reasonable attorney's fee. It should be emphasized that a private attorney who files a suit would be awarded attorney's fees, even though the case were taken over and prosecuted by the Attorney General.

(7) Both versions of the bill contain the provision that—

> The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

This is an overt attempt to destroy administrative procedures under State laws and the right of State administrative bodies and State courts to act.

TITLE III. CIVIL ACTION FOR DEPRIVATION OF RIGHTS ELIMINATED BY FULL COMMITTEE SUBSTITUTE

The discussion of the pending bill will be continued by titles. However, as it eliminated from the subcommittee proposal "Title III—Civil Action for Deprivation of Rights," that title will be discussed here. The discussion will then continue with the titles numbered as they are in the pending bill.

This title III would have authorized the Attorney General to institute civil actions for and in the name of the United States, including the right to apply for a permanent or temporary injunction or restraining order to prohibit the denial of any right, privilege, or immunity secured to any individual by the Constitution or laws of the United States.

Title III of the subcommittee proposal was discussed October 15, 1963, by Attorney General Robert F. Kennedy when he appeared

before the Committee on the Judiciary then sitting in the executive session. Copies of his statement have been distributed to the public by the Attorney General. In it he said:

> Title III would extend to claimed violations of constitutional rights in State criminal proceedings or in book or movie censorship; disputes involving church-state relations; economic questions such as allegedly confiscatory ratemaking or the constitutional requirement of just compensation in land acquisition cases; the propriety of incarceration in a mental hospital; searches and seizures; and controversies involving freedom of worship, or speech, or of the press.
>
> Obviously, the proposal injects Federal executive authority into some areas which are not its legitimate concern and vests the Attorney General with broad discretion in matters of great political and social concern.
>
> To illustrate: Which types of disputes should the Attorney General make a matter of Federal concern? Should he exempt disputes involving reading of the Bible in classrooms? If so, on what basis? What criteria should he adopt to determine whether to intervene in a particular case of an arrest for investigation, for example, or the banning of a movie as obscene, or a claim that the rate set by a State public utilities commission is unreasonably low?

The omission of this title, however, does not in any manner moderate or "water down" the bill in the field of civil rights within its general scope. One purpose of the subcommittee proposal, as well as the reported bill, is to grant broad new powers to Attorney General Kennedy. This is accomplished by authorizing him to file suit in the name of the United States whenever and wherever he pleases without the necessity of precedent proof that the rights of any individual have been denied, and without any individual having filed a suit. Promiscuous and unlimited filing of suits by the Attorney General is authorized as follows:

> As to voting, blanket authority is given to the Attorney General to file suits "for the United States or in the name of the United States" by the Civil Rights Act of 1957 as amended by part 4 of the Civil Rights Act of 1960 appearing as 42 U.S.C. 1971, as amended.
>
> Blanket authority is granted to the Attorney General in the reported bill by title II, section 204(a), lines 1 through 10, to file suits "for or in the name of the United States" as to "places of public accommodation" not only where any person "has engaged in any action or act prohibited" by the section, but where "*there are reasonable grounds to believe that any person is about to engage therein.*" This contains the ineffectual requirement that he shall do so "if he satisfied himself that the purposes of this title will be materially furthered by the filing of an action."
>
> As to desegregation of public facilities section 301(a) of title III of the reported bill grants authority to the Attorney General to institute actions "for and in the name of the United States," with the ineffective requirement that all the Attorney General is required to do is certify in the words of

the statute that he has received a complaint from an individual and he is satisfied that such person is unable "either directly or through other persons or organizations to bear the expense of the litigation" or that suit by such individual "might result in injury or economic damages to such person or persons, their families or their property." This actually amounts to blanket authority in the Attorney General without the necessity of any proof in any court of the receipt of a complaint nor is there any necessity of the filing of an action by an individual alleging a violation of his civil rights.

As to "Title IV—Desegregation of Public Education," blanket authority is given to the Attorney General "to institute for and in the name of the United States, a civil action" under ineffective provisions similar to those mentioned in the last paragraph. This is granted by section 407 of the pending bill.

As to "Title VI—Nondiscrimination in Federally Assisted Programs," and "Title VII—Equal Employment Opportunity Commission," section 711(b) obviously will be utilized as a basis of an Executive order, authorizing the Attorney General to act in connection with the provisions of these titles. The blanket authority given the President in section 711(b) is as follows:

"The President is authorized to take such actions as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States." As herein pointed out, this is not limited to Government contractors and subcontractors but is almost unlimited in scope by the provisions of title VI.

As to "Title X—Miscellaneous," section 1001 provides "nothing in this Act shall be construed to deny, compel, or otherwise affect any right or authority of the Attorney General or of the United States or any agency thereof under existing law to institute or intervene in any action or proceeding." This is added in the pending bill and did not appear in the subcommittee proposal.

Therefore the omission of title III which appeared in the subcommittee proposal does not constitute a moderation or watering down thereof within the broad field covered by the various titles. The powers desired are granted in each by the use of other language.

TITLE III. DESEGREGATION OF PUBLIC FACILITIES

In the subcommittee proposal the provisions of this title were combined with the provisions of what now is "Title IV—Desegregation of Public Education." Both versions grant new blanket authority to the Attorney General "to institute for and in the name of the United States" actions for the desegregation of "any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof." The only requirement, and it is meaningless and ineffective, is that the Attorney General certify

that he has received a complaint and is satisfied that if the individual filed a suit, he would be unable, either directly or *through other interested parties or organizations* to bear the expense of the litigation, or the filing of the suit might jeopardize the employment of or result in injury or economic damage to such person or persons, their families or their property. There is no requirement that an action should be filed by any individual or that any proof in connection with the certification be made in any court.

The pending bill is just as strong and objectionable as the subcommittee proposal. There is nothing moderate or "watered down" about either. Such authority was not asked either by the President or Attorney General either on February 28 or on June 19. It will result, during an election year, in a rash of suits in those areas where such action would appear to be to the political advantage of the administration then in power.

TITLE IV. DESEGREGATION OF PUBLIC EDUCATION

(1) The full committee substitute contains the same provisions of the subcommittee proposal as those provisions relate to desegregation of public education. It does not "water down" or moderate in any way the subcommittee's proposals. The same provisions are brought forward and, as pointed out elsewhere in this minority report (in conjunction with title VI of the bill) these provisions will ultimately result in total Federal control of the educational processes in the United States.

(2) As heretofore noted, the administration bill contained references to "racial imbalance" in connection with desegregation in public education. The subcommittee proposal and the pending bill have omitted this reference. As heretofore explained, it appears that this action is a matter of "public relations" or semantics, devised to prevent the people of the United States from recognizing the bill's true intent and purpose. The administration apparently intends to rely upon its own construction of "discrimination" as including the lack of racial balance, as distinguished from a statutory reference to "racial imbalance," as evidenced by the reports of the U.S. Commission on Civil Rights and recent Executive orders and regulations.

(TITLE V. SUBCOMMITTEE BILL)

(ESTABLISHMENT OF COMMUNITY RELATION SERVICE)

(1) This title, incorporated in the subcommittee proposal and the original administration bill, has been deleted from the pending bill and the titles of this report will, therefore, hereafter be renumbered.

(2) The provisions of the subcommittee proposal established a Community Relation Service in the Department of Commerce without any particular authority or function other than to meddle in community affairs.

(3) The subcommittee proposal and the pending bill provide for the appropriation of $10 million per year as the amount necessary to support the force of the "Equal Opportunity Employment Commission" after the full title on equal employment opportunity goes into effect. Both include a mandatory requirement that every Federal department and agency empowered to extend Federal financial assist-

ance to any program or activity must take action in connection with "discrimination" on the ground of race, color, or national origin. This, in truth, means that the amount of the Federal budget, presently approximately $100 billion, will be available for the purpose of enforcing this bill.

(4) It was apparently considered that ample authority was given elsewhere to effectuate the desires of the proponents of the legislation and hence this title was omitted.

TITLE V. COMMISSION ON CIVIL RIGHTS

(1) Although the President, in his message submitting the original legislation to the Congress, did not ask that the U.S. Commission on Civil Rights be made a permanent commission, and the Attorney General testified before this committee that the Commission should not be made permanent, nevertheless both the subcommittee proposal and the full committee substitute do so by repealing section 104(c) of the Civil Rights Act of 1957.

(2) The bill contains all other provisions of the subcommittee proposal, with the exception of the express provision concerning advice and technical assistance to government agencies, communities, industries, organizations, or individuals. Thus the subcommittee proposal was strengthened and broadened by the pending bill by adding a material and potent amendment and the removal of an objectionable provision of less importance.

TITLE VI. NONDISCRIMINATION IN FEDEALLY ASSISTED PROGRAMS

(1) *Of all the harsh and unprecedented proposals contained in the bill, this title is the most radical departure from proper governmental policy.* It constitutes an amendment of *every* Federal statute which has heretofore been passed instituting or appropriating funds to support *every* program or activity of the Federal Government involving Federal financial assistance. It makes a mandatory requirement upon every Federal department or agency to utilize its resources to carry out the commands of the U.S. Commission on Civil Rights within the scope of the act through action of the President and the Attorney General, regardless of the purpose of the individual program or activity and the funds provided in support thereof.

(2) The amendments to this title set forth in the reported bill as compared to the subcommittee proposal constitute a masterpiece in deception and a patent attempt to mislead Members of Congress and the citizens of the United States concerning the scope and effect of the bill.

(3) The subcommittee proposal, after subjecting every program or activity receiving Federal financial assistance to manipulation in connection with discrimination on the basis of race, color, or national origin, provided that "each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, loan, *insurance, guarantee, or otherwise,* shall take action by or pursuant to rule, regulation, or order to effectuate the purposes of the act." The reported bill contains identical provisions with the exception that the words "by way of grant, contract, loan, insurance, guarantee, or otherwise" are changed to the words "by way of grant, contract, or loan." Every instance of

Federal financial assistance by way of "insurance or guarantee" involves a contract. The authors of this minority report have not been able to ascertain any program or activity receiving Federal financial assistance in which a contract is not involved. Hence, the omission of the words "insurance, guarantee, or otherwise" apparently has no effect.

(4) The broad objection of citizens to the improper use of Federal funds as a club over every person or entity participating in such programs or activities has resulted in the erection of a smokescreen. There is no substantial change in the pending bill as compared to the subcommittee proposal. The grossly objectionable words of the subcommittee proposal have simply been eliminated on the theory that they are already covered by the general words retained in the bill. *This does not constitute a moderation or watering down of the bill; it does constitute a deliberate attempt to mislead those who would be affected thereby.*

(5)(*a*) Section 602 of the pending bill contains the following:

> Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding of a failure to comply with such requirement, or (2) by any other means authorized by law.

The equivalent language in the subcommittee proposal was as follows:

> Compliance with any requirement adopted pursuant to this section may be effected (1) by suit under section 703 of this title, (2) by the termination of or refusal to grant or to continue assistance upon an express finding that there has been a failure to comply with such requirement, or (3) by any other means authorized by law.

(*b*) The pending bill omitted what was section 703 of the subcommittee proposal affirmatively providing for enforcement by civil action or other proceeding of any rules, regulations, orders, agreements, etc., entered into under this title. It can be readily seen that when the pending bill retained the enforcement provision that the same might be done by "any other means authorized by law," it would include the right to bring a suit to enforce a rule, regulation, order, or agreement, including temporary restraining orders and injunctions. This purported "moderation" or "watering down" of the substitute proposal is neither a "moderation" nor a "watering down." To the contrary, it is a patent attempt to bemuse the opposition and to mislead the citizens of the United States and Members of Congress.

TITLE VII. EQUAL EMPLOYMENT OPPORTUNITY

(1) The pending bill and the subcommittee proposal both authorize that there be appropriated "not to exceed $2,500,000 for the administration of this title by the Commission during the *first* year after its enactment, and not to exceed $10,000,000 for such purpose during the *second* year after such date." This indicates the extent of policing of employers, labor unions, and employment agencies planned by the administration. The difference in amount apparently arises because

both drafts of this title provide that the sections which now appear as sections 704, 705, and 707 shall not take effect until 1 year after enactment. These are the sections defining "unlawful employment practices" by employers, labor unions, and employment agencies and authorizing the Commission to bring proceedings for enforcement thereof.

(2) There is no material change in the substantive provisions of this title and its predecessor title defining "unlawful employment practices." Hence the general coverage of both versions is the same. In defining the basis of discrimination, the subcommittee proposal contained the words "to discriminate against any individual because of his race, color, religion, national origin, or *ancestry*." The pending bill omits the words "or ancestry."

(3) The major difference between this bill and the subcommittee proposal as it applies to this title is distinct. The subcommittee proposal created an "Equal Employment Opportunity Commission" consisting of an "Equal Employment Opportunity Board" and an "Office of the Administrator of the Equal Employment Opportunity Commission." This bill sets up an "Equal Employment Opportunity Commission" but does not divide it into a "Board" and an "Office of the Administrator."

(*a*) The subcommittee bill called for procedures before the newly created board, followed by judicial review by the district courts of the United States. The full committee substitute calls for proceedings by the Commission in the U.S. district courts under section 707. In lieu of hearings before the Board as set forth in the subcommittee proposal, the full committee substitute authorizes the court to appoint a master to hear issues of fact. The pending bill has strengthened and broadened the enforcement provisions by giving the President blanket and unlimited authority (sec. 711(b)), which was not contained in the subcommittee proposal.

> The President is authorized *to take such action as may be appropriate* to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States."

This would encourage unlimited issuance of Executive orders.

(b) With the broad and extensive powers granted under title VI applying to any program or activity receiving Federal assistance by way of grant, contract, or loan, it was apparently decided that this method of enforcement renders unnecessary the creation of a board. Judicial proceedings with facts heard by a master will be required only in those exceptional cases where the employer, the labor organization, or the employment agency does not enter into contracts in connection with any program or activity receiving Federal financial assistance. Cancellation of contracts, calling of loans, withdrawal of credit, withdrawal of the right of representation by labor organizations, blacklisting for undetermined periods of contractors, labor organizations, employment agencies, banks, realtors, or other persons appear to be considered as sufficient enforcement procedures, particularly since they will be policed through both the resources of the Commission (supported by $10 million per year for the first year that the title goes into full effect) and the resources and facilities of "each Federal department and agency which is empowered to lend Federal financial

assistance to any program or activity by way of grant, contract, or loan," required to be used for these purposes by the mandatory provisions of section 602.

(4) *There is nothing moderate or "watered down" in this bill as compared to the subcommittee proposal concerning "equal employment opportunity" and the establishment of a commission thereunder.* In fact, the broad and unlimited power given the President under section 711(b), inserted for the first time in the pending bill, more than offsets the procedural change substituting a master to hear matters of fact in lieu of the "Board."

TITLE VIII. REGISTRATION AND VOTING STATISTICS

This title is substantially the same in both versions of the bill. The full committee substitute provides that the survey and compilation by the Secretary of Commerce shall be "to the extent recommended by the Commission on Civil Rights," whereas the subcommittee proposal is not so limited. The full committee "limitation" is, of course, no limitation at all.

TITLE IX. PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

(1) This title is identical with the same title which appeared in the subcommittee proposal.

(2) It constitutes a radical departure from accepted statutory procedure concerning cases removed from State courts to Federal courts. It places civil rights cases in a special category under which the jurisdiction and right of State courts to proceed may be destroyed indefinitely by a simple filing of a petition to remove, followed by an appeal from an adverse order of the U.S. district court. The full effect of this provision is discussed on page 59 of this report.

BRIEF STATEMENT CONCERNING UNCONSTITUTIONALITY OF THE PROPOSED CIVIL RIGHTS ACT OF 1963

Space will not permit the full presentation of authorities demonstrating the unconstitutionality of the provisions of H.R. 7152 as reported to the House. There are certain portions of this legislation so clearly unconstitutional that we give a brief summary below:

Title I of the bill, by which the Congress of the United States attempts to fix the qualifications of the electors in Federal elections held for the purpose of choosing "President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives," directly contravenes the following provisions of the Constitution of the United States:

> Article I, section 2, paragraph 1: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."
>
> Article II, section 1, paragraph 2: "Each State shall appoint, in such Manner as the Legislatures thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in

> the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed as Elector. . . . The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."
>
> The 17th amendment: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. *The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.*"

It can hardly be contended that the 17th amendment, which became effective in 1913, was amended by the 14th amendment which became effective in 1868. That neither the 14th amendment nor the 15th amendment, which became effective in 1870, confer any right upon Congress to fix the qualifications of voters in Federal elections or State elections has been repeatedly held by the Supreme Court of the United States both prior to and subsequent to the adoption of the 17th amendment.

In *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162 (1875) the Supreme Court of the United States rejected the contention of a woman who claimed that as a citizen of the United States she was entitled to vote for presidential electors and that the denial to her of the right to vote was prohibited by the privilege and immunities clause of section 1 of the 14th amendment. Following the construction of the *Slaughter House* cases, 83 U.S. (16 Wall.) 36 (1873), the Supreme Court held that the 14th amendment did not confer a right of suffrage upon anyone and that if the 14th amendment had done so, the 15th amendment would have been unnecessary.

The 15th amendment was the subject of construction by the Supreme Court in *United States* v. *Reese*, 92 U.S. 214 (1876), in which the Court said:

> The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not.

The Supreme Court recognized the power of the States to determine voter qualifications through the use of literacy tests in the cases of *Guinn* v. *United States*, 238 U.S. 347 (1915); *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45 (1959). The imposition of poll taxes and the payment thereof as a condition precedent to voting was also upheld by the Supreme Court in the cases of *Breedlove* v. *Suttles*, 302 U.S. 277 (1937). See also *Pirtle* v. *Brown*, 118 F. 2d 218 (6th Cir. 1941), certiorari denied, 314 U.S. 621 (1941); *Butler* v. *Thompson*, 341 U.S. 937 (1951), affirming 97 F. Supp. 17 (E.D. Va. 1951).

The rule as it now exists under the Constitution of the United States was set forth in ex parte Yarbrough, 110 U.S. 651 (1884) by the Supreme Court as follows:

> The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualifications for voters for these eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualifications thus furnished as the qualifications of its own electors for Members of Congress.

Under the present Civil Rights Acts more than ample authority is granted for all reasonable purposes in the enforcement of the rights of those who wish to vote in Federal elections. The authority of the Civil Rights Commission in this field has been recognized by the U.S. Supreme Court in the case of *Hannah* v. *Larche*, 363 U.S. 420 (1960). Numerous powers have been given by Congress to the Attorney General to inspect election records and to bring suits in connection therewith including provisions for expediting such cases. Construction of these powers is illustrated by the cases of *Kennedy* v. *Lynd*, 306 F. 2d 222 (5th Cir. 1962); *Kennedy* v. *Bruce*, 298 F. 2d 860 (5th Cir. 1962); *Dinkens* v. *Attorney General*, 285 F. 2d 430 (5th Cir. 1961); *In re Coleman*, 208 F. Supp. 199 (S.D. Miss. 1962).

There is no need for this legislation as proposed. It is improper as a matter of Federal policy. It is unconstitutional.

The necessity of constitutional amendment to permit Federal action is demonstrated by the fact that voting and elections have been the subject of six amendments to the Constitution of the United States. The 12th amendment, which became effective in 1804, changed the method of electing the President and Vice President. The 14th amendment, which became effective in 1868, has to do with reduction of representation in the House of Representatives whenever the right to vote of male citizens 21 years of age and over is abridged by a State under circumstances therein stated and disqualifies any officeholder who engages in insurrection or rebellion. The 15th amendment, which became effective in 1870, prohibits denial or abridgment of the right to vote on account of race, color, or previous condition of servitude. The 17th amendment, which became effective in 1913, provides for the election of Senators and that the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislatures. The 19th amendment, which became effective in 1920, prohibits denial of the right to vote on account of sex, and the 20th amendment, which became effective in 1933, revised the method of election of the President in certain circumstances. The 17th amendment, ratified long after the 14th amendment and after many of the decisions of the Supreme Court herein mentioned, is phrased in mandatory terms as is the article concerning qualifications of electors who shall choose Members of the House of Representatives. The 15th and 19th amendments place restrictions upon the qualifications which the States may set up for electors therein. The presently pending constitutional amendment prohibits denial of a right to vote for President, Vice President, Senator, or Representative because of a

failure to pay any poll tax or other tax. All of these amendments recognize that the Congress has no right or power to fix or determine the qualifications of electors in Federal elections. No such authority has ever existed or been judicially approved as to either Federal or State elections.

Title II of the bill concerning "discrimination in places of public accommodation" violates both the 5th amendment and the 10th amendment and cannot be justified under either the 13th amendment or the 14th amendment. Space will not permit a detailed discussion of these amendments of the Constitution and the decisions of the Supreme Court and the Federal courts of appeal thereunder. In 1875, after the adoption of the 13th amendment and the 14th amendment, Congress enacted a statute entitled "An Act To Protect All Citizens in their Civil and Legal Rights." This act is so similar to title II of the bill that we quote therefrom as follows:

> * * * All persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; * * * applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

In 1883, the Supreme Court of the United States, in the *Civil Rights Cases*, 109 U.S. 3, held such statute to be unconstitutional. The holding by the Court that the 14th amendment is a prohibition against State action and only State action was unequivocal. Mr. Justice Bradley delivered the opinion of the Court, which is, in part, as follows:

> It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers

executive or judicial, when these are subversive of the fundamental rights specified in the amendment.

One of the recent decisions of the Supreme Court of the United States reaffirming the principles announced in the *Civil Rights Cases* is that of *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 6 L. Ed. 2d 45 (1961), in which the Court said:

> The *Civil Rights Cases*, 109 U.S. 3 (1833), "embedded in our constitutional law" the principle "that the action inhibited by the first section (equal protection clause) of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

As late as May 20, 1963, in *Peterson* v. *City of Greenville*, 373 U.S. 244, the Supreme Court stated: "Individual invasion of individual rights" is not within the purview of the 14th amendment, and "private conduct abridging individual rights does no violence to the equal protection clause * * *." In his concurring opinion in the *Peterson* case, Mr. Justice Harlan said:

> Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference.

In 1959 the Fourth Circuit Court of Appeals in the case of *Williams* v. *Howard Johnson*, 268 Fed. 2d 845, 847, stated clearly this well-recognized rule when it said:

> This argument fails to observe the important distinction between activities that are required by the State and those which are carried out by voluntary choice and *without compulsion* by the people of the State in accordance with their own desires and social practices. Unless these actions are performed in *obedience* to some *positive provision* of State law they do not furnish a basis for the pending complaint. The license laws of Virginia do not fill the void.

It is clearly unconstitutional to bottom any claim of Federal control of State action upon "custom or usage" involving acts which constitute merely private conduct.

The attempt to base Federal regulation of public accommodations upon the interstate commerce clause is equally unconstitutional. The inclusion of inns, hotels, motels, or other establishments which provide lodging, is based upon lodging being provided to "transient guests"; the inclusion of restaurants and other facilities engaged in selling food is upon the basis that "it sells or offers to serve interstate travelers or a substantial portion of the food which it serves * * * has moved in interstate commerce." The claim of the right of Federal regulation on such bases is directly in the teeth of the decisions of the Supreme Court and the courts of appeal delineating the bounds of interstate commerce.

"The broken package doctrine" is succinctly stated by the Supreme Court in *Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 290, as follows:

> Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages.

The claim that the intrastate sale or renting of goods which have moved in interstate commerce is in itself interstate commerce is in the teeth of the long line of cases illustrated by the statement of Mr. Justice Brandies in *Pacific States Box & Basket Co.* v. *White*, 296 U.S. 176, 80 L. Ed. 138:

> The operation of the order is intrastate, beginning after the interstate movement of the containers has ceased, and after the original package has been broken.

That the basis used in this bill to attempt to transform intrastate commerce into interstate commerce is untenable is demonstrated by the decision of the Court of Appeals of the Fourth Circuit quoted above, *Williams* v. *Howard Johnson*, 268 F. 2d 845 (1959) as follows:

> We think, however, that the cases cited are not applicable because we do not find that a restaurant is engaged in interstate commerce merely because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from State to State. As an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above and, thus, is at liberty to deal with such persons as it may select.

See also *Elizabeth Hospital, Inc.* v. *Richardson*, 269 F. 2d 167, decided by the Court of Appeals of the Eighth Circuit in 1959, which cites the decision of the Supreme Court supporting the rule as follows:

> We think that the plaintiff's operation of a hospital, to include rendition of hospital services to some persons who came from outside the State, is no more engaging in interstate commerce than was Dr. Riggall in rendering medical services to persons who likewise came from other States. The fact that some of the plaintiff's patients might travel in interstate commerce does not alter the local character of plaintiff's hospital. *If the converse were true, every country store that obtains its good from or serves customers residing outside the State would be selling in interstate commerce. Uniformly, the courts have held to the contrary.* *A. L. A. Schechter Poultry Corp.* v. *United States*, 1935, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570; *Lawson* v. *Woodmere*, 4 Cir., 1954, 217 F. 2d 148, 150; *Jewel Tea Co.* v. *Williams*, 10 Cir., 1941, 118 F. 2d 202, 207; *Lipson* v. *Socony-Vacuum Corp.*, 1 Cir., 1937, 87 F. 2d 265, 267, certiorari granted 300 U.S. 651, 57 S. Ct. 612, 81 L. Ed. 862, certiorari dismissed 301 U.S. 711, 57 S. Ct. 788, 81 L. Ed. 1364.

Space will not permit further citation of authorities or discussion of the many other phases of this legislation which are unconstitutional. Titles I and II have been discussed in this report as illustrative of the total disregard of the Constitution of the United States by those who drafted this legislation. We will not burden this report with further authorities.

If this bill is enacted, the basic and fundamental power of the States and the power of our local governments to regulate business and to govern the relation of individuals to each other will have been preempted.

In all the years Congress has pondered the equities of civil rights legislation, no committee has ever suggested for the executive such totality of power as is embodied in this package of legislation. Grant it, and our fire ball of liberty will spin into darkness, suffocate. For our Republic cannot live without breath and the breath of our Republic is personal liberty and personal responsibility.

E. E. WILLIS.
E. L. FORRESTER.
WM. M. TUCK.
ROBERT T. ASHMORE.
JOHN DOWDY.
BASIL L. WHITENER.

SEPARATE MINORITY VIEWS OF HON. RICHARD H. POFF AND HON. WILLIAM CRAMER

We regard it as our duty to protest the manner in which this legislation was handled in committee. Without duplicating what others have developed in detail, we must underscore what has been said. If such procedural departures and parliamentary irregularities are countenanced in the future, then the committee system as a functional part of traditional legislative mechanics has expired. But we shall not dwell further on that.

Neither shall we undertake to make an exhaustive analysis of the bill by titles. Instead, we shall address oursleves to the bill by subject matter.

I. VOTING

The 15th amendment to the Constitution says that—

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

We take that language to mean what it says. What it says is that government at no level, Federal, State or local, can (1) deny a citizen the right to vote on account of race or (2) abridge the citizen's right to vote on account of race. This means that no level of government can grant the franchise to one race and deny it to another; but it means more than that. It means that, having granted the franchise to all races, no level of government can abridge the voting privilege of an individual citizen of one race by requiring him to meet voter qualification criteria which are not required of an individual citizen of another race. In other words, all citizens of all races who meet voter qualifications standardly prescribed and uniformly applied are entitled to vote. To the content and purpose of the 15th amendment, and to the principle behind it, we fully subscribe.

The 15th amendment, however, says nothing whatever about voter qualifications which citizens, regardless of race, are required to meet. Most certainly it does not say that the Federal Government shall have the power to prescribe voter qualifications. Neither does any other part of the Constitution. Indeed, article 2, section 1, clause 2 says that presidential electors shall be selected "in such manner as the legislature thereof may direct." The courts have consistently held that this means that the States have the exclusive right to establish voter qualifications in presidential elections. *Walker* v. *United States*, 93 F. 2d 383 (8th Cir., 1937), certiorari denied 303 U.S. 664. Moreover, article I, section 2, says that in House of Representatives elections, voters in each State "shall have the qualifications requisite for electors of the most numerous branch of the State legislature." The same language is repeated in the 17th amendment concerning Senate elections. The courts have uniformly held that this language means that the States and only the States have the right to prescribe

voter qualifications. The only restraint upon this right is the prohibition in the 14th and 15th amendments against racial discrimination in the promulgation and application of voter qualifications.

There are those who maintain that article I, section 4, grants the Federal Government power to invade the field. That section does grant Congress the power to make or alter certain regulations written by the States. However, the power is limited to regulations governing "the times, places, and manner of holding elections" for Members of Congress. Clearly, this language pertains to the mechanics of conducting elections and not to voter qualifications.

Just as clearly, a literacy test does not fall within the meaning of that language. A literacy test is a test of the qualification of the voter. The Supreme Court has repeatedly ruled that States have the power to impose literacy tests to determine whether a citizen is qualified to vote. *Williams* v. *Mississippi*, 170 U.S. 213 (1898), *Lassiter* v. *Northampton County*, 360 U.S. 45 (1959). Only when the test is not applied uniformly or is applied in a discriminatory manner is it unlawful under the 15th amendment. *Davis* v. *Schnell*, 81 F. Supp. 872, affirmed, 336 U.S. 933 (1949).

Notwithstanding the Constitution and court decisions, title I of this bill undertakes to legislate in the field of voter qualifications by abridging the rights of the States to prescribe literacy tests. The majority apologizes for this Federal trespass on the grounds that the bill only raises a presumption of literacy which is rebuttable. How innocuous this sounds. Consider the legal consequences which this rebuttable presumption entails. In a court case, the State registrar would be required to carry the burden of proving, by a preponderance of the evidence, that the voter applicant was illiterate. If the applicant can successfully avoid a literacy test, this burden would not be light.

The 15th amendment also empowers the Congress to write legislation implementing its guarantee. In 1957, Congress wrote what is now Public Law 85–315 which, among other things, authorizes the Attorney General to bring suits for injunctions to prevent deprivation of voting rights on racial grounds. In 1960, Congress wrote what is now Public Law 86–449. Under that law, when the Attorney General has brought a suit for injunction and the court has found that some person's voting rights have been denied or abridged on account of race, the Attorney General may ask the court to find a "pattern or practice" of discrimination. If such a pattern or practice is found, any Negro in the area concerned may apply for a court order declaring him qualified to vote. Within 10 days, the judge must hear his case, and if he is satisfied that the applicant is otherwise qualified under State law, he issues an order permitting the applicant to vote. The judge also has the power to appoint voting referees to receive such applications, to take evidence concerning qualifications and to make recommendations to the judge.

In our judgment, the legislation already on the statute books fully satisfies the mandate of the 14th and 15th amendments. The legal procedure it establishes is expeditious and efficient and the relief it grants is thorough and complete. Yet, the Attorney General contends that the procedure is cumbersome and lends itself to delay which frustrates its purpose. Allegedly to obviate delay, he recommends and the legislation authorizes the three-judge court concept with

appeals, bypassing the circuit court of appeals, directly to the Supreme Court.

We suggest that another reason may have prompted the establishment of this new concept. Since the adoption of the 1957 and 1960 acts, the Attorney General has seen fit to bring only 40-odd cases to the courts. In some of these cases, the courts have found that a "pattern or practice" of discrimination existed. In a number of cases the court has found that no such pattern or practice existed. Can it be that the Attorney General is unhappy with the negative decisions rendered by individual district judges? The three-judge court concept enables the Attorney General, when he has no confidence in the individual district judge involved, to do a little *forum shopping*. Upon his demand, three judges rather than one would be impaneled to hear voter discrimination cases. While one of these three must be a district judge of the district in which the proceeding was instituted, the other two judges, one of whom must be a circuit judge, may come from any other geographical area of the State or outside the State within the circuit involved. Moreover, if the Attorney General does not demand a three-judge court, and if no individual district judge of the district in which the proceeding was brought is available, then the chief judge of that district can designate a judge serving any other district in any other State located in the circuit. Undoubtedly in the designation of such an individual judge, the chief judge would lend much weight to the preference suggested by the Attorney General. It goes without saying that the defendant in the proceedings has no equivalent opportunity to shop for his forum. While the Congress may have constitutional power to grant the Nation's chief law enforcement officer such a preferential procedural privilege while denying it to the citizen he is suing, the Congress is not bound to exercise that power. Rather, it should exercise legislative restraint and decline to do so.

With respect to the voting section, one final point needs to be made. With a great pretense at moderation, the Attorney General recommends that the section be confined to Federal elections, and the majority reports that it is so confined. In fact, it is not. As a practical matter, the section covers any election if a single candidate for a single Federal office is running in that election. Stated differently, if elections of State Governors and county sheriffs are held at the same time as congressional elections, then title I is applicable to all applicants seeking to vote in that election. This clearly appears from the subsection 101(c) of the bill which refers to "any general, special, or primary election held *solely or in part*" for the purpose of electing Federal officials. Moreover, title I directly or indirectly amends section 1971(a) of the existing law which refers to *all* elections. In defining the word "vote," section 1971(e) of existing law refers, not to candidates for Federal office, but rather to "candidates for public office".

Accordingly, it cannot be effectively argued that title I successfully confines itself to Federal elections.

II. Public Accommodations

A. ANALYSIS OF TITLE II

Title II theoretically is based on two constitutional grounds. Enumerated private business establishments are covered (1) if they affect interstate commerce, or (2) if segregation is "supported" by State action. The word "supported" is defined as meaning that segregation (1) "is carried on under color of law, statute, ordinance, regulations, *customs*, or *usage*," or (2) is required, fostered, or encouraged by action of a State * * * ."

Private businesses included are:

1. *Lodgings*, except an owner-occupied establishment with less than six rooms;
2. *Eating establishments*, and *gasoline stations* if interstate customers are served or if a substantial protion of products sold has moved in interstate commerce;
3. *Places of amusement*, if the performers or films have moved in interstate commerce;
4. *Any retail establishment* in which one of the foregoing is located, or any retail establishment located in any of the foregoing; and
5. *Any establishment or place* if segregation is required by law or order of a State.

If any person seeking to exercise his rights under this title is intimidated or punished, either he or the Attorney General may institute a suit for injunctive relief. Such a suit may be brought when any person is "about to engage" in any act of or any threat or attempt at intimidation or punishment.

While the Attorney General is directed before bringing a suit to notify county, Federal, or State authorities and attempt to resolve the controversy, if he files a certificate with the court that this would cause unnecessary delay, he can proceed with the suit forthwith.

The doctrine of exhaustion of legal and administrative remedies at the State level is abolished. While an apparent effort is made in section 205(b) to avoid Federal preemption criticism to any degree in which State civil rights laws are inconsistent with this title, they are by express language preempted and nullified by the Federal statute.

B. THE INTERSTATE COMMERCE CLAUSE

As stated above, one of the two constitutional bases upon which title II is sought to be predicated is the interstate commerce clause.

That Congress over the years has broadened the scope and extended the thrust of that clause far beyond what the authors of the Constitution intended cannot be disputed. However, the courts have upheld the Congress only when its statutes dealt directly with people or goods moving in or intended to move in commerce crossing State lines. Title II does not so confine itself.

Lodging establishments are covered, whether or not their guests have traveled or intend to travel across State lines; the bill makes reference only to "transient guests." Until 1959, even the NLRB did not claim jurisdiction under the interstate commerce clause over such establishments, and jurisdiction was asserted then only with respect to hotels grossing more than $500,000 under the theory that

the volume of business was a yardstick to the quantum of interstate activity. As late as 1961, Congress refused to extend the Fair Labor Standards Act to hotels and motels on the ground that they are engaged primarily in intrastate rather than interstate commerce.

Eating establishments and gasoline stations are covered by this title, and some effort has been made to tie this coverage to interstate activity. However, this constitutes an expansion of the interstate commerce umbrella far beyond what Congress so far has been willing to make. Congress has not extended the antitrust laws or the labor laws to the establishments this bill would cover. Congress has exempted eating establishments from the Fair Labor Standards Act, while gasoline stations were later covered only when the annual volume of business exceeds $250,000. Prior to the establishment of that yardstick the courts specifically refused to sustain coverage merely because the station served interstate motorists. *Dial* v. *Hi Lewis Oil Co.* 99 F. Supp. 118 (1951).

Places of amusement are covered by this title. We recognize that the Supreme Court has repeatedly ruled that segregation has an adverse impact on interstate commerce with respect to *professional* athletic contests, including specifically football, boxing, and basketball games. The courts have never made the same finding with reference to *nonprofessional* intercollegiate and interscholastic contests. Perhaps this bill is not intended to cover such, but the language is so broad and so imprecise as to lend itself to a possible interpretation of such coverage.

We also recognize that the courts have brought motion picture theaters within the coverage of the Sherman Act. However, all of the decided cases involved conspiracies among large industrial corporations located in different States, which conspiracies were designed to restrain the operation of the movie industry in its interstate capacity. *U.S.* v. *Crescent Amusement Co.* (323 U.S. 173 (1944)); *U.S.* v. *Paramount Pictures* (334 U.S. 10 (1947)); *U.S.* v. *Griffith* (334 U.S. 100 (1947)).

Although Congress has been unwilling to include movie theaters under the interstate commerce concept of the Fair Labor Standards Act, this bill would cover every remote motion picture theater in every isolated hamlet simply because the film it screens was at some time transported across State lines. By the same process of reasoning the shoeshine boy could be said to be involved in interstate commerce because the shoe polish he uses was manufactured in another State. If the reach of the interstate commerce clause is to be extended to such lengths, then there is no longer any such thing as intrastate commerce.

Having named these three categories of private business establishments, the bill adds a "catchall" category. Any retail establishment in which one of the three foregoing categories of business places is located, or any retail establishment located in any of those three categories is covered. Ergo, if a lunch counter is located in a drugstore or a department store, the entire store is covered. If a doctor or lawyer has an office in a hotel building, he is covered.

Again, even if we assume that Congress has the power to legislate with respect to some of these business establishments in some of these three categories (which we are not willing to concede), still prudence would dictate the exercise of legislative restraint.

C. THE 14TH AMENDMENT

The second constitutional base upon which title II is sought to be predicated under section 201(d) is the 14th amendment.

On October 15, 1883, the Supreme Court, by an 8 to 1 vote, rendered decisions in five cases which have come to be known as *The Civil Rights Cases*. Involved was the interpretation of the act of 1875 entitled, "An act to protect all citizens in their civil and legal rights" (18 Stat. L. 335). The defendants had been indicted for violations of that act in that they refused service in their hotels and theaters to Negroes. The Court ruled that the equal protection clause of the 14th amendment does not relate to the private conduct of private individuals in their private places of business but only to action by a State, some arm of the State or some State official acting under color of State or local law. The essence of this decision has been repeatedly reaffirmed by the Federal courts, including the Supreme Court as late as 1961. *Williams* v. *Howard Johnson's Restaurants* (268 F. 2d 845 (1959)); *Slack* v. *Atlantic White Tower System* (284 F. 2d 746 (1960)); *Burton* v. *Wilington Parking Authority* (365 U.S. 715 (1961)).

What Mr. Justice Harlan, in a recent dissenting opinion, had to say on this point is worth repeating here:

> An individual's right to restrict the use of his property * * * lies beyond the reach of the 14th amendment. Freedom of the individual to choose his associates or his neighbors; to use and dispose of his property as he sees fit; to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from Government interference.

We realize that there are those, including Mr. Justice Douglas, who feel that the granting of a State franchise or a city or county license to private business firms, or the use of State and local police officers to protect the business and property of such firms, constitutes State action within the meaning of the 14th amendment Those who feel that human rights in property constitute an essential thread in the American fabric of individual liberty can never accept such specious reasoning, and unless the Congress is prepared to upset the decisions the Supreme Court has renderd over the last 80 years, the public accommodations section of this bill cannot be constitutionally based on the 14th amendment.

D. MRS. MURPHY'S ROOMINGHOUSE

Excepted from coverage under both the interstate commerce concept and the 14th amendment concept is an owner-occupied lodging house with five or less rooms. During the Attorney General's testimony before the full committee, he was asked on what rationale, legal or moral, this exemption was based. His reply was that the "relationship" in such establishments was primarily social rather than *commercial*. This indicates that coverage of lodging establishments is intended to be based on the interstate commerce clause and that Congress has power to make exemptions in such coverage.

Assuming that Congress has such power, should Congress exercise such power? Should one private businessman with six rooms to let be subject to a lawsuit when he denies accommodations to a Negro

while his competitor next door does so with impunity? If morality is involved, why is it moral for one businessman to discriminate and immoral for another?

But the inconsistency is even more aggravated. In answer to another question, the Attorney General said that while a 5-room *roominghouse* would be exempt, a *boardinghouse* serving five diners would be covered. Is it legal or moral to discriminate in the renting of rooms but not in the serving of food?

If coverage of lodging establishments is based on the 14th amendment rather than the interstate commerce clause, then surely there is no legal justification for an exemption. How can there be equality under the equal protection clause of the 14th amendment when the clause itself is applied unequally?

And yet, we believe that these very exemptions are themselves the best possible evidence, indeed a confession, of the impracticability of extending Federal control to small localized private business enterprises, commanding private property regulation and compulsory customer acceptance by the businessman while leaving the customer free to choose the business establishment he patronizes.

III. Suits by the Government Under the Equal Protection Clause

A. SUITS BY THE ATTORNEY GENERAL

It is important to recognize that this title is divided into two parts. The first concerns suits *instituted* by the Attorney General and the second concerns suits instituted by private citizens in which the Attorney General is authorized to *intervene*.

The Attorney General is empowered to initiate suits to compel the desegregation of any public facility "owned, operated, or managed" by or on behalf of a State. (In purpose and effect, this is similar to the power to initiate suits to compel desegregation in schools and colleges granted to the Attorney General in title IV, and the power granted the Attorney General in the public accommodation provision of title II, and accordingly the comments made here are applicable to these titles as well.)

We have no difficulty understanding the words "owned" or operated." We do have trouble understanding the import of the word "managed." What does it mean? Surely, it means something more than "owned" or "operated." Does it mean regulation? All public facilities which are licensed or franchised by a State, including public utilities, radio and TV stations and private, intrastate transportation companies, are regulated by the State. Is the Attorney General's power to institute suits intended to reach licensed business firms regulated by the State? If so, then the public accommodations provisions of this legislation are not confined to those business categories enumerated in title II.

B. INTERVENTION IN INDIVIDUAL SUITS

The second part of this title empowers the Attorney General to "intervene" in any suit instituted by an individual citizen charging denial of equal protection of the laws on account of race, and is broader in application than title III of the 1957 bill which the Senate deleted

from the bill. The inventory of the different kinds of such suits is too long to recite. Suffice it to say that the inventory would include suits charging racial discrimination in local elections, legislative apportionment, civil service employment, composition of grand juries and petit juries in criminal trials, etc. Indeed, if a Negro were arrested for unlawful conduct as a member of a violent mob, he could petition a Federal district court for a writ of habeas corpus on the grounds that he had been denied equal protection of the laws on account of his race, and the Attorney General could intervene as a party in the proceeding.

The Attorney General objected to title III as it appeared in the subcommittee bill on the grounds that it vested too much power in his hands and interjected the Department of Justice too far into too many fields of litigation. The amended version of title III does no less. Moreover, the present version makes the Attorney General a free lawyer for private litigants in civil litigation at the expense of the taxpayers in suits against some of these same taxpayers. Defendants in these suits, of course, must pay for their own lawyers, after having paid taxes to pay the costs of the Government's suits.

IV. Cut Off the Funds

In its April 1963 report, the Civil Rights Commission recommended that the President seek power to cancel or suspend Federal aid funds to States which fail to "comply with the Constitution and laws of the United States." At his April 17 press conference, the President was asked to comment on that recommendation. In response the President said, "I don't have the power to cut off aid in a general way as was proposed by the Civil Rights Commission, and I would think it would probably be unwise to give the President of the United States that kind of power * * *."

Title VI of this bill gives the President "that kind of power" and we share the President's feelings that it is "unwise." Assuming, as the Supreme Court has said, that "what the Federal Government subsidizes it can control," should the Federal Government, acting through the executive branch, be vested with control powers to terminate or suspend by administrative fiat programs of financial assistance which the legislative branch has authorized and funded? True, this bill makes provision for judicial review of agency actions upon the demand of the State or individual aggrieved by such actions. However, agency action will have been taken, the funds will have been cut off, and the State and its citizens will have already been injured before any judicial determination of racial discrimination has been made. The cart is before the horse. Why should not the judicial determination be made first, and why should not the burden of bringing the suit rest upon the Federal Government rather than the State government or its citizens? Surely the accused should not be punished until guilt has been established under the rules of evidence and constitutional safeguards which our American system of jurisprudence provides.

It will be seen that the judicial *review* authorized by this legislation (as distinguished from an *original* judicial proceeding) is keyed to the Administrative Procedure Act. This entails at least two pertinent consequences. First, under the Administrative Procedure Act, the

review is conducted, not by a district trial court, but by the circuit court of appeals; in all respects, this proceeding is a *review* rather than a *trial*. Second, the Administrative Procedure Act requires the circuit court to uphold the administrative findings of the agency if they are supported by "substantial" evidence. "Substantial" evidence does not mean a majority of the evidence; it does not mean a preponderance of the evidence; according to judicial construction, "substantial" evidence means only a reasonable quantum of evidence in support of the agency's decision. Why is this significant? It is significant because title VI requires the agency only to make an "express finding" of discrimination; it does not require the agency to conduct a formal hearing into that question. Accordingly, the administrator of the agency need only gather information (not under oath), treat it as evidence of discrimination, reach an "express finding" that discrimination exists, cut off the funds and then sit back and wait for the State or other recipient to take an appeal under Administrative Procedure Act to the circuit court of appeals. If the circuit court determines that "substantial" evidence exists, the agency finding is affirmed and the State is out of court without ever having had its full day in court.

We will assume, however, that although title VI does not so require, the agency would decide to conduct a full formal hearing at which the State would be permitted to produce its evidence. Even so the State would not enjoy full protection of its rights. The limited review procedure authorized in Administrative Procedure Act was justified when the act was written on the grounds that administrative agencies were supposed to have more expertise in their particular fields than the courts themselves. That is why the courts were allowed to reverse administrative findings only when they were not supported by substantial evidence, were clearly erroneous, or were contrary to law. Outside the Department of Justice itself, no administrative agency can claim to have any special expertise in the field of racial discrimination. Accordingly, the theoretical justification for the limited procedure established in Administrative Procedure Act does not exist, and because it does not exist, tying the judicial remedy of title VI to Administrative Procedure Act is not justified because it does not fully protect the rights of those charged with racial discrimination in the administration of Federal aid programs.

The foregoing consideration has to do with the judicial remedy which would be made available to those charged with acts of discrimination. It should also be remembered that this judicial procedure is available to those who bring charges of discrimination and who are aggrieved by the negative ruling of the administrative agency. Thus, no matter how frivolous the charge may be, the complainant may demand and the circuit courts must entertain petitions for judicial review. It is obvious that the passage of this legislation would clutter the docket of the circuit court with an unmanageable workload.

To what Federal aid programs would title VI apply? The subcommittee bill embraced all Federal financial assistance programs involving a grant, contract, loan, insurance, guarantee, or otherwise. The bill finally reported by the full committee "narrows" the scope of the act to grants, contracts, and loans. This does not mean, however, that the scope of the legislation is narrow. While it is

impossible to compile a complete list, the following is a partial list of *existing* Federal aid programs which apparently would be embraced:

Agricultural experiment station (7 U.S.C. 361a–361i).

Agricultural experiment station (Public Law 88–74).

Agricultural Marketing Service (7 U.S.C. 1621–1630).

Agricultural and the mechanic arts, colleges for (7 U.S.C. 321–326).

Civil defense (50 U.S.C. app. 2281–2286).

Fish restoration and management projects (16 U.S.C. 777–777k).

Highway construction (23 U.S.C. 101–133).

Housing: Farm housing (42 U.S.C. 1471–1485).

Housing: Low rent housing (42 U.S.C. 1401–1435).

Housing: Slum clearance and urban renewal (42 U.S.C. 1450–1462).

Housing: Urban planning (for smaller communities) (40 U.S.C. 461–462).

Public works planning (non-Federal) (40 U.S.C. 462).

School lunch program (12 U.S.C. 1751–1760).

Soil conservation (16 U.S.C. 590g, 590h).

Veterans' State homes (38 U.S.C. 641–643).

Watershed protection and flood prevention (16 U.S.C. 669–669i).

Juvenile Delinquency and Youth Offenses Control Act of 1961 (Public Law 87–274, 42 U.S.C. 2541–2546).

International research and training (International Health Research Act of 1960, Public Law 86–610, 22 U.S.C. 2101–2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistant Act of 1954, 7 U.S.C. 1704(k).

Cooperative research or demonstration projects on social security or related programs (sec. 1110, Social Security Act, 42 U.S.C. 1310).

Federal aid to Cuban refugees (Migration and Refugee Assistance Act of 1962, Public Law 87–510, 22 U.S.C. 2601–2605).

Child welfare services (pt. 3, title V, Social Security Act, 42 U.S.C. 721 et seq.).

Research, training, or demonstration projects in child welfare (sec. 526, Social Security Act, 42 U.S.C. 726).

Temporary assistance to repatriates (sec. 1113, Social Security Act, 42 U.S.C. 1313).

Hospitalization of mentally ill repatriates (Public Law 86–571, 24 U.S.C. 321–329).

Surplus property disposition and utilization (Public Law 152, 81st Cong., sec. 203, 40 U.S.C. 484) (based on acquisition cost of property, not depreciated value at time of disposition).

Financial assistance for maintenance and operations of schools in federally affected areas (Public Law 874, 81st Cong., 20 U.S.C. 236–244).

National Defense Education Act of 1958 (Public Law 85–864, 20 U.S.C. 401–589). Title II, "Loans to Students in Institutions of Higher Education." Title IV, "Graduate Fellowships." Title V, part B, "Counseling and Guidance Training Institutes." Title VI, "Language Development." Title VII, "Educational Media."

Area redevelopment program (Public Law 87–27, 42 U.S.C. 2501–2525).

Cooperative research in education (Public Law 531, 83d Cong., 20 U.S.C. 331–332).

Teaching of mentally retarded children (Public Law 85–926, 20 U.S.C. 611–617).

Grants for teaching in education of the deaf (Public Law 87–276, 20 U.S.C. 671–676).

Manpower development and training (Public Law 87–415, 42 U.S.C. 2571–2620).

Community health services, particularly for chronically ill and aged (sec. 316 of the Public Health Service Act, 42 U.S.C. 237a).

Cancer demonstration and control (Department of Health, Education and Welfare Appropriations Act, 1963, Public Law 87–582).

Hospital and medical facilities research and demonstrations (sec. 636 of the Public Health Service Act, 42 U.S.C. 291n).

Air pollution (Public Law 158, 84th Cong., 42 U.S.C. 1857–1857g).

Radiological health (sec. 314(c) of the Public Health Service Act, 42 U.S.C. 246(c); Department of Health, Education and Welfare Appropriations Act, 1963, Public Law 87–582).

Public health traineeships (sec. 306 of the Public Health Service Act, 42 U.S.C. 242nd).

Professional nurse traineeships (sec. 307 of the Public Health Service Act, 42 U.S.C. 242e).

Schools of public health and public health training (sec. 314(c) of the Public Health Service Act, 42 U.S.C. 246(c)).

Graduate training in public health (sec. 309 of the Public Health Service Act, 42 U.S.C. 242g).

Research, field investigation, and general research support (sec. 301 of the Public Health Service Act, 42 U.S.C. 241).

Fellowships, traineeships, and training grants (secs. 301 and 433 of the Public Health Service Act, 42 U.S.C. 241, 289c).

Health research facilities construction (title VII of the Public Health Service Act, 42 U.S.C. 292–292i).

Water treatment works construction (sec. 6 of the Federal Water Pollution Control Act, 33 U.S.C. 466e).

Domestic agricultural migratory workers (sec. 310 of the Public Health Service Act, 42 U.S.C. 242h).

Intensive vaccination programs (sec. 317 of the Public Health Service Act, 42 U.S.C. 247b).

Old-age assistance and medical assistance for the aged under title I, Social Security Act, 42 U.S.C. 301–306.

Aid to families with dependent children under title IV, Social Security Act, 42 U.S.C. 601–609.

Maternal and child health services under part 1, title V, Social Security Act, 42 U.S.C. 701–705.

Crippled children's services under part 2, title V, Social Security Act, 42 U.S.C. 711–715.

Aid to the blind, under title X, Social Security Act, 42 U.S.C. 1201–1206.

Aid to the permanently and totally disabled under title XIV, Social Security Act, 42 U.S.C. 1351–1355.

Aid to the aged, blind, or disabled, and medical assistance for the aged under title XVI, Social Security Act, 42 U.S.C. 1381–1385. (Hearing provisions, 42 U.S.C. 1383(c)(2) and 1384.) (Effective fiscal year 1963; as of June 30, 1963, no State had an approved plan.)

General health, tuberculosis, mental health, heart disease, control, and venereal disease control (sec. 314 of Public Health Service Act, 42 U.S.C. 246).

Vocational rehabilitation services (sec. 2, Vocational Rehabilitation Act, 29 U.S.C. 32).

Vocational rehabilitation extension and improvement grants (sec. 3, Vocational Rehabilitation Act, 29 U.S.C. 33).

School construction in federally affected areas (Public Law 815, 81st Cong., 20 U.S.C. 631–645).

Library services for rural areas (Library Services Act of 1956, 20 U.S.C. 351–358).

Vocational education in practical nurse training (Public Law 911, 84th Cong., 20 U.S.C. 15aa–15jj).

Area vocational education programs (title VIII of the National Defense Education Act of 1958, Public Law 85–864, 20 U.S.C. 15aaa–15ggg).

Hospital and medical facilities construction (Hill-Burton). Title VI of the Public Health Service Act, 42 U.S.C. 291h(a), 291j(a).

Water pollution control programs (sec. 5 of the Federal Water Pollution Control Act, 33 U.S.C. 466d).

Land-grant college program (7 U.S.C. 301–308, 321–331).

Vocational education (20 U.S.C. 11–34).

Not only is it uncertain what programs would be covered, it is unclear what phases of covered programs would be reached in the application of the law. Action to cut off funds can be taken not only when the agency finds that a person has been "excluded from participation in" or "denied benefits of" a Federal aid program. Such action can also be taken when the agency finds that a person has been "subjected to discrimination" under such programs. It may be clear enough what the first two clauses mean, but if it means more than the first two, what does the clause "subjected to discrimination" mean? To what does that phrase apply? Does it apply to only the direct monetary benefits under the Federal aid program? Or does it also extend to the employment practices of Federal contractors? For example, could Federal highway funds be withheld because the administrator found that some person had been "subjected to discrimination" when he applied to the contractor or his subcontractor for a job or promotion? Can funds for the construction of hospitals under the Hill-Burton Act be denied because the administrator feels that nurses, orderlies, and other job applicants have been discriminated against because of race? Motorists receive the primary benefits under the Federal highway program; patients are the primary beneficiaries of the Hill-Burton program; but those who work for contractors constructing hospitals and building highways could be called secondary beneficiaries. To what depths may the Federal administrator descend in searching out discrimination practiced under or incidental to Federal aid programs?

Citizens of all colors of all States pay Federal taxes. All should be entitled, without discrimination on account of race, to share in the

benefits financed by Federal taxes. This cannot be; and the innocent are damned with the guilty, if a Federal executive agency can terminate Federal programs in an entire State or in some geographical portion of that State because one citizen was discriminated against by one State official or by a fellow citizen.

V. FEPC

First, this title extends coverage to any employer engaged in any industry "affecting" interstate commerce who employees 25 or more workers, to any labor union with 25 or more members and to any employment agency.

A. ANALYSIS OF TITLE VII

Second, this title enumerates a series of acts or omissions on the part of an employer which it declares to be "unlawful employment practices." These include:

1. failure to hire a job applicant on account of his race;
2. refusal to hire a job applicant on account of his race;
3. discharge of an employee on account of his race;
4. discrimination in compensation against an employee on account of his race;
5. discrimination in terms of employment against an employee on account of his race;
6. discrimination in conditions of employment against an employee on account of his race;
7. discrimination in privileges of employment against an employee on account of his race;
8. limitation of employees on account of race in such a way as to tend to deprive an individual employee of employment opportunities (promotions) or otherwise adversely affect his employee status;
9. segregation of employees on account of race in such a way as to tend to deprive an individual employee of employment opportunities or otherwise adveresly affect his employee status;
10. classification of employees on account of race in such a way as to deprive an individual employee of employment opportunities or otherwise adversely affect his employee status;
11. discrimination against any job applicant or any employee who makes a charge under this title or assists or participates in an investigation or proceeding conducted pursuant to this title; and
12. publication of any notice or advertisement relating to employment which indicates "any preference, limitation, specification, or discrimination, based on race . . ."; and
13. discrimination on account of race against any individual in an apprenticeship program.

(Similar conduct on the part of labor unions and employment agencies is also defined as "unlawful employment practices.")

Third, this title establishes a Federal Equal Employement Opportunity Commission, consisting of five members appointed by the President, with its principal office in Washington and with regional offices located wherever the Commission "deems necessary," staffed by attorneys, officers, agents and employees, unlimited in number, which the Commission deems necessary to carry on its assigned duties.

Fourth, this title establishes the procedure to be followed. An individual claiming to be discriminated against can deliver to the Commission a verified written complaint that an employer has committed an "unlawful employment practice"; or such charge can be made "on behalf" of such person by another person or organization. The Commission furnishes the employer with a copy of the complaint and proceeds to make an investigation, in pursuance of which, the Commission may "enter and inspect" the employer's place of business, examine and copy his records, question his employees and "investigate such facts, conditions, practices, or matters as may be appropriate * * *." If as many as two members of the Commission (less than a majority) decide that "reasonable cause exists," the Commission attempts through "conciliation and persuasion" to eliminate the unlawful employment practice. If it fails, the Commission is requred to bring a civil suit in the Federal district court against the employer. If the Commission prevails, the court will issue an injunction preventing the employer from engaging in the practice with which he is charged and compelling him to take such affirmative action "as may be appropriate," including hiring of the job applicant or reinstatement of the employee, with or without back pay.

B. CONSTITUTIONALITY

1. Interstate commerce clause

The first constitutional ground in which this title is sought to be predicated is the interstate commerce clause. For the same reasons assigned in the discussion of the public accommodations section of this bill, this clause is not a proper constitutional foundation, and even if it could be remotely considered such, Congress should not attempt to pitch a new Federal tent on this tortured ground.

The bill proceeds upon a theory similar to the "quantum of income" theory. This theory is that the quantum of employees is a rational yardstick by which the interstate commerce concept can be measured. Out of thin air, the bill pulls a figure and determines that 25 employees is the magic number—not 26 or 24 but 25.

In an effort to strengthen this flimsy yardstick the bill defines an employer as "a person engaged in any industry affecting commerce." What does the word "affecting" mean? The Supreme Court has defined it to mean anything that "asserts a substantial effect on interstate commerce * * * irrespective of whether such effect at some earlier time has been defined as 'direct' or 'indirect.'" *Wickard* v. *Filburn*, 317 U.S. 111, 215 (1942). The *Wickard* case, a farmer who had produced only 239 bushels of wheat and consumed the same on his own farm was declared to be "affecting" interstate commerce. In a similar vein activities of local bakeries and the sales of medicines by local retail drugstores were held to "affect" interstate commerce. *Moore* v. *Mead's Fine Bread Company*, 348 U.S. 115 (1954). *U.S.* v. *Sullivan*, 332 U.S. 689 (1947).

Under these decisions, and impelled by the broad, vague powers conferred by title VII, it is safe to predict that the Federal Equal Opportunities Employment Commission would assert plenary jurisdiction over the employment, promotion, discharge, and working conditions policies of every restaurant, hotel, gas station, manufacturer, bank, law firm, hospital, small loan company, barber shop,

funeral parlor, beauty salon, night club, and other local retail service, trade, and professional establishment which employs 25 or more full- or part-time employees. Again, we must say that if the interstate commerce clause can be broadened and deepened to this extent, then the concept of *intrastate* commerce is obsolete.

2. Privileges and immunities

The second constitutional ground on which this title is sought to be predicated is the "privileges and immunities" clause.

While it is unclear precisely what is intended, it would appear certain that the language of the bill does not refer to the comity clause, article IV, section 2, which concerns "privileges and immunities of citizens in the several States." Reference undoubtedly is intended to the 14th amendment which reads in part, "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * *."

The latter clause, of course, applies only when action by a State or by a State official under color of law is involved, and not to action by a private citizen. So far as we are aware, no State has any statute on its books which discriminates against any citizen's right to a job on account of race. If such a statute existed, it would fall under the prohibition of the "equal protection" clause of the 14th amendment rather than the "privileges and immunities" clause.

Within 5 years after the ratification of the 14th amendment, the Supreme Court handed down a decision which had the effect of rendering the effect of the privileges and immunities clause a "practical nullity." *Slaughter-House Cases*, 16 Wall. 36 (1873). In that case, a statute of the State of Louisiana granted a corporation a monopoly in the business of slaughtering cattle. The plaintiffs brought a suit based on the theory that the right to engage in the butcher business was a "privilege and immunity" within the meaning of those words in the 14th amendment. Plaintiffs contended that these words had the effect of converting all rights enjoyed by citizens of each State into privileges and immunities of the U.S. citizenship, and that any State statute which abridged a privilege such as the right to engage in the butcher business constituted a violation of the clause. The court rejected this contention and held that the privileges protected under the 14th amendment were only those "which owe their existence to the Federal Government, its national character, its Constitution or its laws" which meant simply privileges which had been available to U.S. citizens prior to the adoption of the 14th amendment. The court specifically found that the right to engage in the butcher business was a privilege "left to the State governments for security and protection" and had not been committed to the "special care of the Federal Government" by the privileges and immunities clause of the 14th amendment.

It would seem beyond cavil that the right to employment cannot be distinguished in this context from the right to engage in the butcher business. To contend otherwise would be, as the Court said,

> to transfer the security and protection of all the civil rights * * * to the Federal Government * * * to bring within the power of the Constitution the entire domain of civil rights heretofore belonging exclusively to the States.

Accordingly, for two reasons, the privileges and immunities clause of the 14th amendment cannot be a proper constitutional base for title VII:

(1) no State statute or other State action is involved; and

(2) the right to employment is not a privilege or immunity protected by the privileges and immunities clause of the 14th amendment.

Test of discrimination

With all of its concern for inequality in employment opportunities, the equal employment opportunity title of this bill wholly fails to define "equality." Nowhere in the title can be found language to guide the Commission in its investigation of charges of racial discrimination. All the Commission is required to find is "reasonable cause" for the charge. In searching out evidence of "inequality" or "discrimination" in employment practices, what will the Commission find to be "reasonable cause"? If the Negro labor force in a particular community constitutes 10 percent of the total labor force, will a company whose Negro employees constitute only 5 percent of the company payroll be considered guilty of discrimination? If the company has 100 executives and only 4 are Negro, would this constitute discrimination in promotions to executive pay levels if the Negro work force in the rest of the company constitutes 10 percent of the total company work force? Suppose only 5 percent of the total company work force was Negro while the Negro work force of a competitor company in the same community was 15 percent of its total. Would that constitute evidence of discrimination? If the seniority list maintained by a company or a labor union had more white workers than Negro workers in the upper echelons, would this be evidence of discrimination in the discharge of employees? Even if these few examples are farfetched (which we believe they are not), still they illustrate the variety of charges which could be made and the complexity of the Commission's chore in finding or failing to find "reasonable cause" for the charges.

Once the Commission finds reasonable cause, no matter how unreasonable the evidence might appear to an impartial observer, the Commission, in order to save its own face and in compliance with the mandatory word "shall" in section 707(b) is bound to proceed with a lawsuit against the employer, and if for any reason, such as failure to find "reasonable cause," the Commission does not bring the suit, the complainant himself can bring the suit with the permission of only one member of the Commission.

At the "trial," the Commission presents whatever evidence it has compiled concerning racial disparity. At that point, the employer who has been charged with committing an "unlawful employment practice" must assume the burden of producing evidence to show, either that the conduct complained of did not, in fact, constitute discrimination, or that he did not intend by such conduct to discriminate against the complainant on account of his race. In a word, it becomes the burden of the employer to prove his own innocence. In the process of attempting to do so, he will enjoy no right of trial by jury. Rather, the entire proceeding can be conducted, not only in the absence of the jury but in the absence of a judge before a master acting as a referee for the judge. And if the decision of the court goes against the employer, he must abide strictly by the court's

order or be subject to a fine or jail sentence for contempt of court, imposed by the judge in the absence of a jury.

We do not believe that the American people as a whole, whether employers or employees, want to embark upon this new adventure. We do not believe that they want to make this departure in the functional aspects of the American free enterprise system. We do not believe that they want the Federal Government, through its administrators, commissioners, investigators, lawyers, and judges, to assume this quality and quantity of control over their property and personal freedom to manage their own affairs. If this title of this legislation becomes a statute, we predict that it will be as bitterly resented and equally as abortive as was the 18th amendment, and what it will do to the political equilibrium, the social tranquillity, and the economic stability of the American society, no one can predict.

VI. Appeals of Remand Orders

Section 1443 of title 28 of the United States Code provides that any civil action or criminal prosecution brought in a State court against a defendant who alleges that he has been denied or cannot enforce his civil rights in the State court can, upon the motion of the defendant, be removed to the Federal district court of the district in which the State court is located.

Under section 1447 of title 28, the Federal court can remand the case to the State court if it decides that there were no proper grounds for the removal. Under subsection (d) of that section, the order remanding the case is not subject to appeal to a higher Federal court. Prohibition against appeal of such remand orders, reflecting congressional policy against undue disruption of State court proceedings, has been the law of the land for many years. It is a wise policy, one that promotes the prompt and orderly dispatch of litigation, one that recognizes and preserves the authority and dignity of State courts, and one that maintains the constitutional distinction between State judicial systems and the Federal judicial system.

One of the fundamental principles of American jurisprudence is that, in the interests of an orderly society, legal controversies should be resolved and litigation should be terminated with the least possible delay. Initially, the removal process consumes a period of 10 days. If a remand order is appealable, a great deal more time is consumed, even if upon appeal the remand order is affirmed and the case is returned to the State court. During this period of delay, the hands of the State court are tied and the State remains utterly without any power to resolve the civil controversy or to enforce the criminal law involved. Such a period of delay invites agitators to organize mass demonstrations which often provoke other violations of State laws, including perhaps the same laws involved in the case which has been removed, remanded, and appealed. During the entire period of delay, the Federal courts retain jurisdiction and the laws of the state which may have been challenged hang sterile in a state of suspended animation.

The catalog of lawsuits which title IX would affect incorporates, among others, all suits in which the defendant might invoke the equal protection clause of the 14th amendment. The list is too long to itemize.

A sufficient argument against the inclusion of title IX in this legislation is that the majority report fails to justify any reason for changing with respect to civil rights cases only what has been a time-honored and time-proven policy of judicial procedure.

VII. JURY TRIAL

It is true, as the majority says, that this legislation authorizes no civil damages and imposes no criminal sanctions except that in title VII. It must not be thought, however, that punishment is not potentially involved in most if not all titles of the bill. As our distinguished colleague, the gentleman from Michigan, Mr. Meader, has so well dramatized in his views, this legislation further promotes the "government by injunction" process. Through that process, the executive branch of the Government either forbids or compels citizen action by judicial order. If the citizen violates or fails to comply with the order, then he becomes subject to punishment for contempt of the court which issued the order. It matters not whether the citation is for criminal contempt or civil contempt, upon conviction, compliance is compelled by punishment administered in the form of fines or jail sentences.

If the citation is for civil contempt, the defendant is not entitled to a trial by jury. He is cited, tried, convicted and sentenced by the same judge he is accused of offending. If he is cited for criminal contempt in connection with court orders issued under the voting section and the public accommodations section of this bill, he may possibly get a jury trial under section 151 of Public Law 85-315. Not necessarily. Indeed, under section 151, a jury trial is discretionary with the judge; only if the judge convicts the accused in the absence of a jury and assesses a penalty in excess of $300 fine or 45 days in jail, may the accused demand and receive a jury trial *de novo*.

If a person is cited for contempt in a proceeding under other titles of this bill, he would not be entitled to a jury trial, whether the citation was civil or criminal. Why this distinction between the public accommodations title and the FEPC title was made, the majority report does not undertake to explain.

VIII. Conclusion

Without attempting to recapitulate all of the specific objections to the several titles of this legislation, it is appropriate in summary to say that as a matter of legal craftsmanship, this bill is inexpertly drafted, imprecisely worded and imperfectly oriented to the very problems it professes to solve. The ambiguity of its language creates a cloud of obscurity which conceals its potential consequences. While we are unprepared to say that the ambiguity is deliberate and calculated, it is difficult to believe that it is altogether accidental. Statutory ambiguities require judicial interpretation. In light of the trend court decisions have taken in recent years, it is not unrealistic to predict that the interpretations the courts would make would be of the broadest possible scope. What the courts interpret tomorrow may be altogether different from what a majority of the Members of Congress intended, and with the rule of *stare decisis* all but abandoned, what the court interprets tomorrow will not necessarily be what the

court will interpret next year. Judicial flexibility has supplanted judicial consistency and precedent is readily sacrificed to expediency under the banner of "modern adaptability." Even with respect to the most tightly drawn statute, legislative intent as reflected in legislative history, is with the greatest facility, misinterpreted by the courts. When the statute is loosely drawn, vague, ambiguous and obscure, the judicial branch is handed a blank check, signed by the legislative branch.

For these reasons, because the Judiciary Committee never fully considered the exact version of the bill reported to the House, and because it is impossible to do on the floor of the House the work the Judiciary Committee should have done, legislative prudence dictates that this bill be recommitted.

RICHARD H. POFF.
WILLIAM C. CRAMER.

25-610—63——8

ADDITIONAL INDIVIDUAL VIEWS OF HON. WILLIAM C. CRAMER ON H.R. 7152

As a member of Subcommittee No. 5 of the Judiciary Committee which considered the civil rights matter for many months, I submit these additional individual views:

BRIEF LEGISLATIVE HISTORY

In early 1963 the administration recommended a comparatively innocuous civil rights bill calling principally for continuation for 4 years of the Civil Rights Commission and a voting rights title.

Administration bill

In June 1963, the President sent a second message calling for a broad civil rights package that was introduced as H.R. 7152 on June 19. This bill was attacked by many as being the broadest civil rights bill proposed in history and unduly injecting the Federal Government into new, potentially dangerous areas of activity. H.R. 7152 contained the following basic provisions:

1. A voting rights title prohibiting differing standards, outlawing denial of voting because of "immaterial" errors, requiring literacy tests to be in writing, creating an absolute presumption of literacy for those with a sixth grade education where "instruction is carried on predominantly in English," and empowering the Attorney General to petition upon his certification that less than 15 percent of a racial group is registered to vote for the appointment of a temporary referee who could register voters even before a finding of a pattern or practice of discrimination had been found to exist by the court.

2. A broad public accommodations section, based upon the interstate commerce clause and thus covering any lodging that served transient guests, any motion picture or amusement where its entertainment "customarily moves in interstate commerce," any restaurant or other retail or service establishment where it affects or is affected by interstate commerce. The Attorney General was empowered to bring suit on behalf of any aggrieved party.

3. A public education title providing for educational surveys, technical assistance, grants, and loans to assist in desegregation and racial imbalance, and empowering the Attorney General to initiate court action.

4. Establishment of community relations service.

5. Extension of Civil Rights Commission for 4 years, with additional powers to serve as a national clearinghouse, and to provide technical and advisory services and increasing subpena powers.

6. Discretionary power in the President to carry out a declaration that no law providing Federal assistance by "grant, contract,

loan, insurance, guarantee, or otherwise," shall require such assistance to be furnished in circumstances in which persons are discriminated against.

7. Gave the President's Committee on Equal Employment Opportunity, dealing in the field of Government contracts, legislative sanction.

Hearings were held on this bill until August when subcommittee markup of the bill commenced. This proceeded for about 6 weeks until September 25, 1963, the day the vote on the tax bill took place, and every indication was given until then that the bill would be considered on an impartial, bipartisan basis and in an attempt to write as good a bill as possible.

When the tax bill was passed the mood and modus operandi noticeably changed. The majority on the subcommittee submitted previously prepared amendments, many of which had not been theretofor considered; they were crammed through and a much stronger bill emerged than the very strong bill recommended by the administration.

Out of this display of partisan "we've got the votes" bulldozer procedure in subcommittee emerged the subcommittee bill about which the "civil libertarians" bragged as being the foremost bill in this field in the history of Congress.

Subcommittee bill

The subcommittee bill contained entirely new provisions, such as:

1. A compulsory FEPC title.

2. A broad, catchall 14th amendment approach to public accommodations.

3. Specific application of the voting rights title to State as well as Federal elections.

4. Unlimited powers of the Attorney General in a new title III to bring actions on behalf of aggrieved citizens to protect any constitutional or legal rights.

5. A new public facilities section providing the Attorney General with power to sue in cases involving denial of rights to full use of any facility "owned, operated, managed, controlled, or supported" by a public authority.

6. Made mandatory withholding of any Federal "grant, contract, loan insurance guarantee, or otherwise" with power to force compliance by injunctive process and providing for only limited review through the Administrative Procedure Act.

7. Provided for a voting census as a basis for considering in the future the possible implementation of the 14th amendment, which provides for withdrawal of congressional representation from a State that discriminates.

8. A right of appeal but only in civil rights cases was provided on a remand order issued by a district court sending the case back to the State court.

This subcommittee bill, which became known as the committee print (No. 1 of H.R. 7152) dated October 2, 1963, thus contained some eight major further "strengthening" amendments to the already extremely strong administration bill.

Thus, on October 2 the full Judiciary Committee commenced executive hearings on the subcommittee bill.

The Attorney General's position

The Attorney General appeared before the committee and disowned a few of the eight major strengthening amendments but embraced a majority of them, thus setting the stage for a bill much stronger than the administration recommendations of June 20 embodied in the original H.R. 7152. The Attorney General refused to recommend deletion of the following:

1. Compulsory FEPC.
2. A revised 14th amendment broad approach to public accommodations (in reply to questions).
3. Powers of the Attorney General to bring suits on behalf of aggrieved persons in specific cases.
4. Public facilities new title.
5. Mandatory rather than discretionary withholding of Federal funds.
6. Voting census taking.
7. Appeal on remand order of only civil rights cases.

Therefore, in each of these respects the Attorney General upheld the basic action of the subcommittee and despite the impression generally given in the press to the contrary he testified in favor of a bill much stronger than the original administration bill.

In all fairness, the Attorney General did testify that he thought the new title III was too broad, while at the same time maintaining that there were cases in which he should have the right to sue on behalf of the aggrieved party and despite the fact that Congress defeated title III in 1957. Likewise, however, the Attorney General, after issuing a statement to the press that he thought the 14th amendment approach to public accommodations was of questionable constitutionality he recommended its retention in amended form during interrogation. Also, he was violently opposed to the subcommittee's sound amendment providing for impounding the votes in temporary referee cases under the voting rights, title I, which was one of the few "softening" amendments adopted in subcommittee. In this latter instance, then, he testified for a bill stronger than the subcommittee bill.

Thus the ground shifted on the entire civil rights question from a possible compromise between the administration bill as originally introduced, which many thought was too tough, and a more moderate approach. A so-called compromise bill in some instances is broader than the subcommittee bill.

When it became obvious that the full committee was not going to try to perfect the subcommittee bill, which became apparent when the first amendment offered to delete State elections and limit title I to Federal elections and in that respect return the title to the administration's original version was withdrawn, the Moore motion was offered to report out the subcommittee bill in hopes that the House, in working its will, would give fair and reasonable consideration to the subject. It became obvious that the full committee did not intend to do the job.

The so-called compromise bill

A vote on the Moore motion was put off until Tuesday, October 29, after frantic efforts over the weekend by certain members of the Judiciary Committee to draft a so-called compromise with the obvious objective of offsetting the Moore motion.

No purpose would be here served by a recitation of how the "compromise" was drafted or who participated in it. Although I was a member of the subcommittee that considered the matter for months, I was not invited to participate nor was I informed of its contents until 10:30 p.m. when a Justice Department messenger delivered my copy on the Monday before the Tuesday meeting. Thus, a new version, some 56 pages in length was "considered" at 10:30 on Tuesday It was read, discussed 2 minutes, without amendment, and without even points of order or parliamentary inquiries being recognized, and it was passed by 12 noon.

Such steamroller tactics on a subject of such vital importance when adequate time could have easily been allowed for full discussion, amendments, and consideration of this 56-page substitute (which is now known as Committee Print No. 2) and which drastically differed from any bill previously considered, and which contained some provisions on which no hearings were held, cannot be permitted to occur without calling them to the attention of the public unless we are to abdicate our individual rights under the rules of the House or unless we are to be accused of tacitly acquiescing in such procedures by failing to expose them. For that reason I reiterate this brief analysis of the legislative history of H.R. 7152.

The legislative history is complete only upon consideration of what this so-called compromise contains, which can lead only to the inescapable conclusion that it is not much of a "compromise." It is substantially stronger than the original administration bill in a majority of the more important aspects. Let me cite a few examples:

1. Compulsory FEPC remains with the slight modification of a right to a court trial de novo when the Commission brings such action, which it "shall" do when "discrimination" is found to exist (title VII).

2. The 14th amendment approach to public accommodations is not limited to the narrower definition of "establishment" under the interstate commerce approach and covers broad State "custom or usage" or where discrimination is "fostered or encouraged" by State action (sec. 201(d)).

3. A catchall new section 202 outlaws or preempts any law, "ordinance, regulation, rule, order of any State or political subdivision thereof" if it "purports" to require "discrimination or segregation." (This was not in either the subcommittee or the original bill.)

4. Desegregation of public facilities, title III, was retained from the subcommittee bill with power of the Attorney General to bring suits on behalf of the aggrieved.

5. A new version of the old title III of the 1957 civil rights bill, defeated by Congress, was included in section 302 which gives the Attorney General the power to intervene in any matter dealing with "equal protection of the laws." This was not in the original administration bill and has a broader application than even the 1957 title III.

6. Mandatory withholding of Federal funds, limited to "grants, contracts, or loans," but only with limited review under the Administrative Procedure Act was maintained under title VI.

7. The Civil Rights Commission was made permanent rather than on a 4-year extension as proposed in the administration bill.

8. The right of an appeal on remand orders only applicable to civil rights cases was retained although not in the original administration bill (title IX).

9. In title I, the temporary voting referee with impounding provisions was deleted and an all-encompassing three-judge court with direct appeal to the Supreme Court was established in all voting rights cases under the 1957 and 1960 acts.

Some examples of what might be argued as being "compromises" on some phases of the bill but which in fact bear little resemblance to a true compromise are as follows:

1. In title I, voting rights—supposedly State elections were eliminated; however, a careful examination of the definition of "vote" under section 101(3)(A) would appear to write State and local elections back into title I.

2. A more restrictive definition of public accommodations was adopted as it relates to the interstate commerce clause, but then was broadened again by section 201(d) relating to the 14th amendment approach, and a further preemption of all State and local "laws, regulations, rules, or orders relating to any establishment or place" was added without any justification in the hearings.

3. Public facilities was retained as a new title III and it will be claimed that cutting back the definition of any public facility to one that is "owned, operated, or managed" by a State or local government is a substantial compromise, but when it is realized that this new title was not contained in the administration bill, and that section 302 providing for Attorney General intervention in any "equal protection of the law" case was added, it does not appear to be much of a compromise.

4. Title VI dealing with cutting off of Federal assistance programs was limited to "grant, contract, or loan" deleting "guarantee or otherwise," but this is not much of a compromise when the administration bill contained a discretionary title, and this "compromise title" remains mandatory.

5. The claimed compromise in title VII dealing with compulsory FEPC which was the addition of court review with "trial de novo" is a minor compromise when it is realized that such court action is mandatory, can be brought by a person on approval of one member of the Commission, and is contained in a title which was not initially in the administration bill.

The purpose of this discussion of the legislative history of the so-called compromise and of those areas in which concessions were supposedly made is to prove conclusively that the bill, as reported, is a tougher bill than the administration bill and is not sufficiently cut back from the subcommittee version to justify congressional approval and in support of my position that the bill should be recommitted.

This brief listing of the major aspects of the so-called compromise bill on which this report is being drafted and which finally emerged from the committee clearly indicates that it was far from a compromise. The bill as reported out by the committee is much stronger in many major respects than the administration bill of June 20, and does not deserve the title of a "compromise."

It will be claimed by some who helped draft the "compromise bill" that many concessions of major import were made. It is true that some concessions were made but when compared to the important liberal additions previously noted any fair analysis would indicate that far more was conceded in the direction of the tougher subcommittee bill than was compromised.

An anlaysis of the titles with due criticism of some of the major points are contained in the separate views of Mr. Poff and myself. As a member of the subcommittee that considered the bill for so many months, I believe it is my duty to make the foregoing legislative history a matter of record.

VOTE FRAUDS

Also for the record, I wish to commend the committee for including one provision in the final draft of H.R. 7152, which is a rewrite of our committee bill, H.R. 6496, reported August 18, 1961, on the subject of extension of the Civil Rights Commission, and which contained the Cramer amendment empowering the Commission to investigate all vote fraud cases. This amendment died in the 87th Congress when it was purposely circumvented by adding the Civil Rights Commission extension as a rider to an appropriation bill without the Cramer amendment. This power is added to the civil rights authority as contained in title V, section 104(a)(5) which provides:

> investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the U.S. Senate or of the House of Representatives, as a result of any pattern or practice of fraud or discrimination in the conduct of such election.

I have been fighting to get this amendment adopted since 1961 because I believe in the right of everyone to vote and believe that it is equally important that all votes be counted, properly tabulated, and not watered down by illegal, fraudulent voting. It is common knowledge that in many of the big cities and some rural counties votes are stolen with impunity This results in the rights of all the people to representative government through the elective process being denied. The right to vote and have that vote counted is the cornerstone of our Republic.

In further explanation I include some of the comments from the 1961 report on my amendment, which was contained in Report No. 995, 87th Congress, 1st session.

> 6. The right to vote is the cornerstone of representative self-government in America. As such, it is imperative that the franchise of every qualified citizen is adequately and effectively safeguarded and protected. Congress, in 1957, concerned with extensive allegations that certain qualified citizens were being arbitrarily denied the right to vote, or to have their vote properly counted, established the Commission on Civil Rights to investigate charges that the franchise of minorities was being abused. This duty of the Commis-

sion was set forth in section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(a)):

"The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain persons are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based."

In 1956, Mr. Herbert Brownell, then the Attorney General, described the proposed operation of the Commission in an executive communication to the Speaker (see p. 14, H. Rept. 291, 85th Cong., 1st sess.):

"Where there are charges that by one means or another the vote is being denied, we must find out all of the facts—the extent, the methods, the results. * * *

"The need for a full-scale public study as requested by the President is manifest. The executive branch of the Federal Government has no general investigative power of the scope required to undertake such a study. The study should be objective and free from partisanship. It should be broad and at the same time thorough."

Since its creation, the Commission has been most vigorous in pursuing these objectives. Its numerous investigations of alleged franchise deprivations have been widely hailed.

President John F. Kennedy, in a recent letter to Chairman Celler urging extension of the Commission, observed, however, that the Commission has not yet fully realized its "constructive potential." This is certainly true. Limited as it is in jurisdiction to the protection of minority interests, it is presently powerless to investigate franchise abuses not based upon "color, race, religion, or national origin."

Yet, as Mr. Byron R. White, Deputy Attorney General, recently observed in a communication to your committee, dated August 7, 1961:

"Apart from the Commission there is no Federal executive agency charged with continuing responsibility for gathering information calculated to assist in the guaranteeing of the protection of constitutional rights * * *."

If it is true that the denial of freedom to any American is a diminution of freedom to all Americans, then we cannot tolerate restrictions on the franchise from any quarter—for any cause. If the constitutional right to vote is worth protecting through a Federal agency for any Americans, it is worth protecting through such agency for all Americans. The time is past, if ever there was such a time, when constitutional protections can be administered in a discriminatory or segregated manner. It is with this conviction, it is to embrace within the ambit of the Civil Rights Commission's operations the job of safeguarding everyone's right to vote, the most fundamental civil right under the Constitution, that paragraph (4) is offered.

The proposed amendment would broaden the functions of the Commission to cover all citizens seeking franchise pro-

tection. If the Commission, in the past, performed a useful function, and our action in extending its life would indicate it has, then filling the present civil rights gap in its responsibilities under the proposed amendment should provide it with an even greater challenge and opportunity for service.

It should be noted well that the new investigative power granted the Commission does not extend to any case involving a purely State or local election.

As with its original authorization to initiate Commission action, allegations must be submitted in writing, under oath or affirmation. It is not permitted to act on mere hearsay or rumor. Unlawfully according the franchise, as well as its denial, is made a ground for Commission action. And, as is already the case, primary elections, as well as general elections, are embraced within the scope of its broadened resibilities.

The proposed amendment is not directed at any locality, party, or election. Rather it is responsive to a long-felt general need. Charges of voting irregularities have probably been made in every election since the founding of the Republic. For the most part, such allegations have been without foundation. But occasionally in our history chicanery has occurred and, because of the lack of effective machinery charged with the responsibility to investigate, has gone unpunished and unexposed to the public view.

Belief in, and respect for, the integrity of the methods by which our leadership is chosen must be maintained. If ever that belief and respect are lost, our freedoms will likewise be lost.

The committee is convinced that the proposed amendment will go a long way toward insuring the preservation of the integrity of the ballot in this country.

WILLIAM C. CRAMER,
Member of Congress.

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88TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 914
1st Session } { Part 2

2036

CIVIL RIGHTS ACT OF 1963

DECEMBER 2, 1963.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCULLOCH, from the Committee on the Judiciary, submitted the following additional views.

[To accompany H.R. 7152]

ADDITIONAL VIEWS ON H.R. 7152 OF HON. WILLIAM M. MCCULLOCH, HON. JOHN V. LINDSAY, HON. WILLIAM T. CAHILL, HON. GARNER E. SHRIVER, HON. CLARK MACGREGOR, HON. CHARLES MCC. MATHIAS, HON. JAMES E. BROMWELL

GENERAL STATEMENT

No legislation of greater significance to the Nation has come before this Congress in our lifetime than the civil rights bill which the Judiciary Committee now presents to the Members of the House.

The 14th amendment to the Constitution of the United States declares:

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws (sec. 1).
>
> The Congress shall have the power to enforce by appropriate legislation the provisions of this article (sec. 5).

Almost a century has elapsed since its ratification, yet not since Reconstruction has Congress enacted legislation fully implementing the article. A key purpose of the bill, then, is to secure to all Americans the equal protection of the laws of the United States and of the several States.

The majority report sets forth the purpose, history, and content of the legislation. It spells out the provisions and delineates their scope and application. We subscribe in substance to that report.

There is, however, a need for fuller documentation of the reasons for the bill. The urgency of the measure makes it imperative that

its supporters state why it is so important. The omission in the majority report of summary statements on policies and practices which have led to this legislation is an unnecessary distillation of the report.

In these additional views we will point to the need for this civil rights bill. In so doing we are mindful that there are many areas of national concern entirely outside the scope of this legislation.

The bill is a comprehensive measure, but it cannot, nor should we expect it to, be a panacea for all our ills. It will not end racial turmoil. No legislation could do this. Nor can legislation relax all the tensions of our troubled times or wipe clean the blot of racial discrimination from out national conscience.

But this bill can and will commit our Nation to the elimination of many of the worst manifestations of racial prejudice. This is of paramount importance and is long overdue. The practice of American democracy must conform to the spirit which motivated the Founding Fathers of this Nation—the ideals of freedom, equality, justice, and opportunity. The entire Nation must meet this challenge, and it must do it now.

TITLE I—VOTING

More than a hundred years have elapsed since the Negro has been freed from the bonds of slavery. Yet, to this day, the Negro continues to bear the burdens of a race under the traces of servitude. In employment, education, public service, amusement, housing, and citizenship, the Negro has faced the barrier or racial inequality. In other titles of this legislation, we have sought to fashion workable tools to correct this inequity. But perhaps no right is more essential to citizenship than the right to vote.

The secret ballot is the touchstone of representative government. Without it, no other benefit or achievement can be considered secure. This is not to imply that the grant of the franchise will automatically equalize job or other opportunities. But, the ability of the Negro to obtain material benefits and social and political advancement will long be retarded in those communities where he is dispossessed of the right to vote.

In over 250 counties in the United States, less than 15 percent of the voting-age Negroes are registered to vote. What is more shameful is the fact that in certain counties while the white population is exceeded by the number of white inhabitants who are registered, Negroes are either totally or all but totally denied the right to vote. The figures below from sample areas illustrate this problem:

Counties illustrating denial of Negro right to vote

County	Population over 21	Registered voters	Percent	County	Population over 21	Registered voters	Percent
A	White, 2,624	2,810	107.1	H	White, 2,287	1,571	68.7
	Negro, 6,085	0	0		Negro, 3,533	0	0
B	White, 1,900	2,250	118.4	I	White, 1,632	1,070	65.6
	Negro, 5,122	0	0		Negro, 2,235	0	0
C	White, 1,649	1,979	120.0	J	White, 2,997	2,225	74.2
	Negro, 5,001	275	5.5		Negro, 5,172	0	0
D	White, 2,648	3,500	132.1	K	White, 640	621	97.0
	Negro, 1,255	29	2.3		Negro, 1,081	0	0
E	White, 4,116	6,130	148.9	L	White, 3,113	3,232	103.8
	Negro, 909	56	6.1		Negro, 3,221	10	.3
F	White, 1,974	2,437	125.4	M	White, 3,324	4,025	121.1
	Negro, 1,336	3	.2		Nonwhite, 125	0	0
G	White, 6,415	5,212	81.3				
	Negro, 5,032	34	.7				

NOTE.—Since a number of other counties could illustrate the problem with equal force, the counties selected have been designated by letters of the alphabet.

Source: U.S. Commission on Civil Rights; 1963 report.

In examining the economic, political, and social attainments of Negroes who live in voterless counties, the picture of present-day inequities is glaringly apparent. Educational achievement is pathetically low; jobs are allocated in discriminatory fashion; libraries, playgrounds, and other places of amusement are segregated or nonexistent for the Negroes; access to good restaurants, hotels, and other places of public accommodations are denied to Negroes; treatment of Negroes by police officials and other public servants is frequently hostile, if not brutal.

We do not maintain that these unsatisfactory conditions are laid directly at the door of vote denial. We do say that experience reveals that elected officials strive to aid and protect those who elect them. Strengthened measures to enfranchise the voterless Negro stand to benefit Negro and white together.

In 1957 and 1960 Congress enacted the first civil rights legislation since the Reconstruction era. The primary thrust of this legislation was to guarantee and enforce voting rights. The principal feature of the 1957 act authorized the Federal Government to bring civil injunctive suits to end discrimination in voting practices. The 1960 act permitted the appointing of Federal referees to speed up registration after a pattern or practice of discrimination had been found by a court.

After 5 years of experience, it is clear that these statutes have not been sufficient to end wholesale voter discrimination in many areas.

Part of this failure must be placed upon the Department of Justice. While recognizing that some 40 lawsuits have been instituted by the Department, success has been extremely limited. Some 13,000 additional Negroes have been placed on the rolls in Alabama and about 5,000 in Tennessee. But barely 2,000 in combined total have been added in Florida, Georgia, and North Carolina; and during the same period, about 3,500 Negroes were eliminated from the voting rolls in Louisiana, while Mississippi and South Carolina each succeeded in disenfranchising 500 more Negroes than were registered. In 5 years, then, except for Tennessee, we are presented with the same picture of marginal Negro registration which we faced in 1957.

The entire blame cannot be placed on the Department of Justice. The cost of litigation is high. The nature of the judicial process permits recalcitrant State and county officials to promote delay

through the use of legal redtape on both the trial and appellate levels. The employment of involved registration techniques makes proof difficult and evidence hard to obtain. The appointment of a few judges whose public records demonstrate a lack of urgency has heightened the occasions for legal entanglement.

In spite of these factors, we do not believe that enough has been done in the field of voting rights. The Department rightly maintains that it takes thousands of man-hours to gather the evidence for each case. Yet, it only has about 20 lawyers assigned to voting cases in its Civil Rights Division as opposed to many times this number in other fields. We believe a greater effort should be made to request an increased appropriation for this Division. Meanwhile, the Department should create a task force to do the job. Attorneys must be loaned from other divisions and assigned to work with the Civil Rights Division until more permanent arrangements are made. Assistant U.S. attorneys in the affected districts should also be employed, together with such law students who might be attracted on a voluntary basis to participate in this program.

Certainly, the present situation is most unsatisfactory. Four counties in Florida have less than 3 percent Negroes of voting age registered. Yet, not one voting case has been instituted in the entire State of Florida. Alabama, Louisiana, Georgia, and Mississippi have counties with no registered Negroes but which have not been faced with a suit. Similarly, North and South Carolina have disproportionately low Negro registration in some counties and, yet, suits have been brought in neither of these States.

New means are to be granted in title I to assist the Federal Government in franchising qualified Negroes. But a law without a will to enforce it is a subterfuge. The Department must eliminate the last vestiges of voter discrimination in every county in the country.

The primary method by which title I is intended to assist in voting cases is through the authority granted to the Attorney General to request a three-judge court to hear voting cases. The testimony before the Judiciary Committee substantiated the fact that certain district court judges have been less than enthusiastic in their enforcement of the 1957 and 1960 acts. Evidence was presented that 2 or more years have elapsed in some cases before a decision could be obtained. Many of these decisions must be considered less than victories. Single judges have in some instances refused to act in the face of convincing evidence. We don't wish to argue the merits of those cases here. But we do say that the test of appeal should be expedited. Appeals can and have been taken to the courts of appeals and Supreme Court, but the process is slow and the prolonged denial of constitutional rights is discouraging to those whom the law is supposed to protect.

The committee concluded then that a means should be created to overcome this impasse which, while fully protecting the rights of all parties involved, would speed up the process. The vehicle chosen was the three-judge district court which has been authorized for many forms of action under the Judicial Code since 1903. A three-judge court is composed of, at least, one circuit court judge and at least one district court judge who resides in the district where the action is commenced. The balance and broad range of views that three judges can bring to bear upon a voting case should assure fewer instances of

delay and a greater willingness to safeguard the individual's right to vote. In addition, the decisions of three-judge courts are appealable directly to the Supreme Court. By cutting down a layer of appeal, it is our hope that the time will not be long distant when the issue of voter discrimination is behind us.

Closely related to the delays in justice are the intricate methods employed by some State or county voting officials to defeat Negro registration. Among the devices most commonly employed are: (1) the application of more difficult literacy tests to Negroes than whites; (2) dilatory handling of Negro applications and failure to notify applicants of results; (3) employment of subjective character tests such as "good character"; and (4) applying more rigid standards of accuracy to Negroes than whites, thereby rejecting Negro applications for minor errors or omissions.

Testimony shows that Negroes will be given long and difficult parts of the Constitution to read, transcribe, and analyze, while whites will be assigned easy sections. Registrars have been known to aid white registrants but ignore the Negro applicant. Similarly, registrars will overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting a Negro application for the same or more trivial reasons.

Here, then, is the crux of the problem. For the basic troubles come not from discriminatory laws, but (as the Civil Rights Commission so well expressed in its 1959 report, p. 133) "from the discriminatory application and administration of apparently nondiscriminatory laws."

It is for these reasons that the committee has amended the 1957 and 1960 Civil Rights Acts to provide that, in Federal elections State registration officials must: (1) apply standards, practices, and procedures equally among individuals seeking to register to vote; (2) disregard minor errors or omissions if they are not material in determining whether an individual is qualified to vote; (3) administer literacy tests in writing. If properly enforced, these provisions could close many loopholes in existing laws.

Furthermore, this legislation would put an effective end to the discriminatory use of literacy tests in Federal elections. Where such tests would be used to determine an individual's qualifications to vote, there would be created a presumption that an individual who had completed the sixth grade of school and has not been judged an incompetent shall be presumed to be literate to vote in Federal elections. The literacy presumption, however, is made rebuttable in a court action.

There are those who maintain that the enactment of these provisions conflicts with article I, section 2 of the Constitution and the 17th amendment. Under these, the States are given the right to establish voter qualifications in congressional elections. Similarly, article II, section 1 places the qualifications of presidential electors under the State authority.

In the case of congressional elections, however, article I, section 4 authorizes Congress to regulate the time, place, or manner of holding elections. A review of historical authority reveals that it was intended by this section to extend broad authority to Congress to control the substantive and not merely the mechanical aspects of elections. Furthermore, the Supreme Court has long held that the right to vote

in Federal elections is derived directly from the Constitution of the United States and not through the State laws (*U.S.* v. *Classic*, 313 U.S. 299 (1941); *Ex parte Yarbrough*, 110 U.S. 651 (1884)).

Since the restrictions on State voting proceedings in the bill are limited to Federal elections, ample authority exists under section 4 to sustain these items in congressional elections.

In addition, the 15th amendment prohibits a State to deny a citizen the right to vote because of his race or color. State laws which attempt to do so are a direct infringement upon this amendment (*U.S.* v. *Raines*, 362 U.S. 17 (1960)).

Aside from direct infringements, such as through legislative means, the amendment also prohibits contrivances by States or State officials to deny the equal voting rights of all citizens. "Sophisticated as well as simple-minded modes of discrimination" are forbidden, and the use of "onerous procedural requirements" which handicap the exercise of the franchise are also prohibited (*Lane* v. *Wilson*, 307 U.S. 268 (1939); *Guinn* v. *U.S.*, 238 U.S. 347 (1915)).

Through the use of the 15th amendment, Congress is vested with the authority in section 2 to enact appropriate legislation to enforce the provisions of the amendment. Under standard constitutional interpretation, Congress has the power to enact necessary legislation to remove obstructions to the fulfillment of the intent and purposes of the amendment (*James Everard Breweries*, v. *Day*, 265 U.S. 545 (1924)). Since wide-ranging evidence has been produced before Congress and other executive agencies of Government that literacy tests and other State voter-qualification standards and procedures have been regularly used by some States to deny people the right to vote because of their race or color, Congress has the authority to eliminate such denials through legislative means. This, moreover, would not only cover congressional elections, but elections for presidential electors, and State elections. The fact that, in title I, Congress is limiting its action to Federal elections can only be interpreted to mean that it has not chosen to exercise its full authority in the field of voting at this time.

Under the "equal protection" clause of the 14th amendment, Congress also has the authority to enact the voting provision of title I. Actions by State registrars to use literacy tests and other qualification standards in a manner which disenfranchises Negroes, while the same tests and standards are applied to white citizens in a different and more lenient manner, constitutes a denial of equal protection (*Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala., 1949), aff'd 336 U.S. 933 (1949); *Cooper* v. *Aaron*, 358 U.S. 1 (1958)). In this regard, Congress can, under section 5 of the 14th amendment, enforce the clause by appropriate legislation (*Virginia* v. *Reves*, 100 U.S. 313 (1879), *Ex parte Virginia*, 100 U.S. 339 (1879)). Faced with the same findings of denial of voting rights to Negroes, as was indicated above, Congress may properly enact the provisions contained in title I.

Finally, article I, section 8 affords Congress wide scope to devise "necessary and proper" means for carrying out the purposes of the Constitution. Since the 14th amendment forbids disenfranchisement on racial grounds, and the 15th amendment commands equal protection of the laws, Congress can under this section fashion reasonable tools for protecting the constitutional rights of American citizens.

It is our hope that the enactment of these provisions and the three-judge court proposal will insure speedy and effective remedies for the ills of voter discrimination.

TITLE II—PUBLIC ACCOMMODATIONS

Another signpost of freedom must be extended to the Negro if he is to overcome racial inequality and if our country is to live up to its national ideals. This is the opportunity for every individual, regardless of the color of his skin, to have access to places of public accommodations. This right is so distinctive in its nature that its denial constitutes a shocking refutation of a free society.

The impact of this inequity is not confined to our citizens and our shores. Many representatives of foreign governments have experienced at first hand this condition. Secretary of State Rusk, in testifying before a Senate Commerce Subcommittee, described the case of an ambassador of an African country, who, when taking a trip, was confronted with a canceled hotel reservation because of his color. Several other ambassadors and lesser diplomatic officials have been denied service at restaurants while traveling about the country. Beaches, swimming pools, theaters, and similar places of accommodation and amusement have similarly been closed to foreign officials.

This form of discourtesy, if not hostility, has not been confined to diplomatic personnel. Students, representatives of private organizations, and other guests to this country have been equally insulted.

Our Nation is engaged today in cold war combat with an alien ideology. On every front—military, economic, political, and social—we must demonstrate the worth of our system. To do this, we need every ally we can obtain. Therefore, when representatives of other nations meet enmity and rejection from operators of public establishments on our soil, they carry away feelings of enmity and rejection themselves. There is little doubt that American citizens would react the same way if confronted in like manner in a foreign land. The result of this cannot but undermine our foreign policy.

We do not intend, however, to rest the need for public accommodations legislation on foreign policy. As stated earlier, the badge of citizenship—extended to Negro as well as white by the 14th amendment—demands that establishments that do public business for private profit not discriminate on grounds of race, color, national origin, or religion.

An official of the National Association for the Advancement of Colored People, testified before the Senate Commerce Subcommittee as follows:

> For millions of Americans this is vacation time. Swarms of families load their automobiles and trek across country. I invite the members of this committee to imagine themselves darker in color and to plan an auto trip from Norfolk, Va., to the gulf coast of Mississippi, say, to Biloxi. Or one from Terre Haute, Ind., to Charleston, S.C., or from Jacksonville, Fla., to Tyler, Tex.
>
> How far do you drive each day? Where and under what conditions can you and your family eat? Where can they use a rest room? Can you stop driving after a reasonable day behind the wheel or must you drive until you reach a city where relatives or friends will accommodate you and yours for the night? Will your children be denied a soft drink or an ice cream cone because they are not white?

In response to Senator Pastore's question as to what the Negro must do, there was the reply:

> Where you travel through what we might call hostile territory you take your chances. You drive and you drive and you drive. You don't stop where there is a vacancy sign out at a motel at 4 o'clock in the afternoon and rest yourself; you keep on driving until the next city or the next town where you know somebody or they know somebody who knows somebody who can take care of you.
>
> This is the way you plan it.
>
> Some of them don't go.

Daily we permit citizens of our Nation to be humiliated and subjected to hardship and abuse solely because of their color.

Equally unendurable is the knowledge that this treatment is not limited to travelers. Inhabitants in local communities—citizens who are long-time residents, taxpayers, leaders in their locales—are similarly denied access to restaurants, hotels, gasoline stations, theaters, and similar establishments. Their money is gladly taken at the supermarket, variety shop, or department store. But, to buy a meal, cold drink, or a bit of entertainment and the cold hand of rejection stares them in the face.

On moral grounds, and from the standpoint of upholding human dignity, the U.S. Congress cannot tolerate such practices. In many other areas of life, Congress has enacted legislation on social and moral grounds. Kidnaping, child labor, prostitution, gambling, abuse of migrant labor, slave labor, adulterated food and drugs, mislabeling, and many other unacceptable activities have been legally proscribed by Congress. There is ample authority and equal justification for action here.

Similarly, Congress has the constitutional right to eliminate segregation or discrimination in places of public accommodation under the 14th amendment.

Section 201(d) precludes racial discrimination or segregation among the same categories of business as those covered by the commerce clause. Thus, hotels, motels, restaurants, gasoline stations, department stores (operating a lunch counter), and similar establishments may not deny service to Negroes if such denial is carried on under color of State or local law, or if a State or political subdivision requires, fosters or encourages discrimination or segregation. In addition, every form of public accommodation, covered through section 201 or not, is prohibited under section 202 from discrimination or segregation if denial of services is required by State or local law.

Pursuant to the "equal protection" clause of the 14th amendment, the Supreme Court has definitely established that a State may not legally require the segregation of places of public accommodation (*Peterson* v. *City of Greenville*, 373 U.S. 244 (1963)). Moreover, where a State makes segregation a public policy (*Lombard* v. *State of Louisiana*, 373 U.S. 267 (1963)); or where it seeks to utilize the police authority to uphold segregated laws or policies (*Wright* v. *State of Georgia*, 373 U.S. 284 (1963), *Garner* v. *Louisiana*, 368 U.S. 157 (1961)), Congress has authority and an obligation to proscribe such activities.

It is argued that the enactment of title II invades rights of privacy and of free association. In respect of the right of privacy, it seems ludicrous to pursue this form of argument since the types of establishment involved in title II are those regularly held open to the public in general. The fact that 32 States have also enacted public accommodations laws—frequently broader in context than this, and pursuing the reasoning of the old common law principle that inns and way stations were open to all, there seems little support for the "right of privacy" argument.

Turning to the "freedom of association" contention, there is little basis for urging this principle in behalf of owners of business who regularly serve the public in general. This "freedom" can only be claimed by the party of interest—the owner, not the customer; and the owner of a public establishment, as above mentioned, is hardly in a position to raise it. Moreover, where freedom of association might logically come into play as in cases of private organizations, title II quite properly exempts bona fide private clubs and other establishments. Finally, it must be said that even if freedom of association is considered to be affected to some degree by the application of title II, there is no question that the courts will uphold the principle that the right to be free from racial discrimination outweighs the interest to associate freely where those making the claim of free association have knowingly and for profit opened their doors to the public.

If we consider the matter solely in commercial and economic terms, we can also substantiate the need for title II. As was so aptly stated, "Some of them don't go." The strain of traveling long distances without respite, the nagging uncertainty of locating a decent place to eat or sleep, or the fear of finding oneself on a lonely road at night with car trouble and no place to turn for assistance has forced innumerable families and individuals to stay at home. The following table presented to the Senate Commerce Subcommittee by officials of the Commerce Department reveals the distances between certain selected cities that a Negro must travel to find a reasonably acceptable place of lodging:

TABLE I.—*Illustrative trip, Washington, D.C., to Miami, Fla., and Washington, D.C., to New Orleans, La., showing location of hotel-motel accommodations of "reasonable" quality readily available to Negroes*

	Route	Miles
Washington, D.C., to Miami, Fla:		
Washington to Petersburg, Va	U.S. 1 and 301	135
Petersburg to Raleigh, N.C	U.S. 1	150
Raleigh, N.C., to Columbia, S.C	U.S. 1	185
Columbia to Savannah, Ga	U.S. 1	116
Savannah to Jesup	U.S. 301	65
Jesup to Jacksonville, Fla	U.S. 17	100
Jacksonville to Ormond Beach	U.S. 1	142
Ormond Beach to Miami	U.S. 1	232
Total mileage, Washington to Miami		1,125
Average miles between locations		141
Washington, D.C., to New Orleans, La:		
Washington, D.C., to Columbia, S.C. (including stops shown above)		470
Columbia to Atlanta, Ga	U.S. 29	215
Atlanta to Tuskegee Institute, Ala	U.S. 29	134
Tuskegee Institute to Mobile, Ala	U.S. 29 and 31	250
Mobile to New Orleans, La	U.S. 90	148
Total mileage, Washington to New Orleans		1,217
Average miles between locations		174

The effect of these distances of "no-man's" land that must be crossed before a sanctuary can be found is ample evidence that travel among persons of dark skin is sizably reduced. In a related manner, testimony was presented before the House Judiciary Subcommittee by an official of the International Brotherhood of Teamsters, that Negro truckdrivers are not sent on overnight trips in certain areas of the country because of a lack of rest accommodations. Likewise, even though regulations of Government prescribe otherwise, many Negroes are subjected to or fear discrimination in railroad, bus, and airlines terminals—thereby reducing interstate travel. Without question, these denials have an immediate and measurable effect on curtailing interstate commerce.

Turning to another example of impediment upon interstate commerce, the Commerce Department presented statistical evidence of the imbalance between Negroes and whites (within the same income classes) in expenditures for admissions to recreational facilities, food eaten away from home, and automobile operations. This imbalance exists to a limited extent throughout the country, but it is significant that the greatest disparity occurs in those areas where places of public accommodation are widely segregated:

TABLE II.—*Average family expenditure for admissions, food eaten away from home, and automobile operations, for 3 income classes, large northern and southern cities, by race, 1950*

Income class and region	Admissions			Food eaten away from home			Automobile operation		
	Negro	White	Negroes percent of whites	Negro	White	Negroes percent of whites	Negro	White	Negroes percent of whites
$2,000 to $3,000:									
Large northern cities	$31	$29	107	$148	$184	80	$52	$86	60
Large southern cities	$23	$31	64	$113	$194	58	$52	$95	55
Northern expenditures as percent of southern	135	81		131	95		100	91	
$3,000 to $4,000:									
Large northern cities	$45	$37	122	$138	$170	81	$67	$158	42
Large southern cities	$37	$39	95	$117	$180	65	$86	$170	51
Northern expenditures as percent of southern	122	95		118	94		78	93	
$4,000 to $5,000:									
Large northern cities	$57	$48	119	$182	$234	78	$148	$220	67
Large southern cities	$39	$45	87	$166	$257	65	$136	$225	60
Northern expenditures as percent of southern	146	107		110	91		109	98	

Source: "Study of Consumer Expenditure Income and Saving," tabulated by Bureau of Labor Statistics, U.S. Department of Labor, for Wharton School of Finance and Commerce, University of Pennsylvania, Philadelphia, Pa., 1956–57.

Still another burden on commerce involves the many instances in which existing business has been retarded or new business discouraged in an area where public accommodations are not open equally to all races. This drag upon the expansion of business occurs even in those communities where such segregation has not caused reaction. But, it is particularly evident in those areas where protest occurs. And, it is obvious that protests are going to continue and increase in response to human reaction. Educated college students, returning military veterans, professionals, and skilled workers, longtime residents and newly arrived inhabitants from more tolerable climates are little inclined to this day and age to sit back with folded hands at the prospect of closed doors, white-only lunch counters, insolent reservation clerks, and the rest.

In Atlanta, Ga., intermittent demonstrations occurred during 1960 and 1961 and during the same period department store and other sales were frequently off 10 percent or more. In the same period, sales were down in Savannah, Ga., by as much as 50 percent during lunch counter sit-in demonstrations. The same has occurred in the past few years to a lesser or greater extent in Columbus, Ga.; Cambridge, Md.; Charlotte, N.C.; Tallahassee, Fla.; Jackson, Miss.; Danville, Va.; Nashville, Tenn.; and many other places. Earlier, Little Rock, Ark., witnessed a complete stoppage of industrial investment following the riots of 1957, although such investments averaged many millions in the years preceding the riots. Equally significant, investment by industry throughout the whole State of Arkansas declined by almost 25 percent in the same period—thereby demonstrating that a local disturbance can affect the commerce of an entire State, region, and the country. Most recently, the segregation of public accommodations and other sources of racial unrest in Birmingham, Ala., have induced many businesses to reconsider their plans to move into or to expand their existing operations in the area.

Closely associated with a general downturn in business, which occurs with resentment and concern over racial discrimination is the heightened difficulty many businesses face in attracting experienced personnel from other areas. Boeing Co. and Kaiser Aluminum have reported facing a difficult task in attracting skilled help in their New Orleans operations. Faculty positions at the Universities of Mississippi and Arkansas have been terminated or hard to fill because of resentment over local discriminatory practices. The Alabama Medical Center at Birmingham has had difficulty in attracting topflight scientists, in spite of an expansion of facilities, for reasons of a similar nature.

Many additional forms of evidence can be produced to support the fact that resentment and bitterness produced through segregated public accommodations exerts a pronounced adverse effect on interstate commerce. Planned conventions in many cities are canceled, while others are automatically scheduled elsewhere because of segregation. The assignment of military personnel is affected or, if assignments take place, they have a direct effect on the morale and reenlistment rate of those who, together with their families, suffer the hardships of discrimination.

Title II of H.R. 7152 seeks to prohibit anyone from denying or interfering with another's right, because of race, religion, color, or national origin to have access to places of lodging, eating establish-

ments, places of entertainment and amusement, gasoline stations, and other places located within or housing such named establishments. From the factual data presented above, there seems no doubt that the continued segregation of these categories of business have a direct and immediate effect upon interstate commerce. And, there is also no doubt that Congress has the constitutional authority to enact legislation to prohibit such segregation.

Congress has the authority to prohibit segregation in interstate and intrastate common carriers and terminal facilities (*Mitchell* v. *U.S.*, 313 U.S. 80 (1941); *Henderson* v. *U.S.*, 339 U.S. 816 (1950); *Boynton* v. *Virginia*, 364 U.S. 454 (1960); *Baldwin* v. *Morgan*, 278 F. 2d 750 (C.A. 5, 1961)).

The courts have long upheld the right of Congress to enact legislation which would eliminate causes of disruption of the free flow of interstate commerce. Previously, we discussed how, utilizing the commerce clause, Congress can curtail social and moral abuses. The Fair Labor Standards Act and child labor laws are certainly examples of this. By the same means, Congress has widely resorted to the commerce clause to correct economic abuses. In doing so, it has instituted and the courts have upheld Government regulation of local activities when they have had an effect on interstate commerce.

The 1942 decision of the Supreme Court in *Wickard* v. *Filburn*, 217 U.S. 111 (1942) is noteworthy. Under the Agricultural Adjustment Act of 1938, Filburn harvested 239 more bushels of wheat than he was authorized. Even though the wheat was for consumption on the farm, the Supreme Court upheld the penalization of Filburn. The theory the Court rested upon might be labeled the "aggregate" theory. That is, the excess production by one farmer might not have an effect on the Nation's wheat market, but the overproduction by the aggregate of American wheat farmers certainly would have had disastrous results. By the same theory, denial of a motel accommodation to one Negro traveler might be insignificant as far as damaging interstate commerce. But the denial, if extended to 20 million Negroes would and does cause a significant disruption of interstate commerce.

Following the same line of thought, Congress has imposed pure drug regulations on local druggists, *U.S.* v. *Sullivan*, 332 U.S. 689 (1947); milk regulation on dairymen, *U.S.* v. *Wrightwood Dairy*, 315 U.S. 110 (1942); and similar supervision over retail auto dealers, tobacco growers, meat dealers, stockbrokers, and many more.

Under the same theory, the antitrust laws have been enacted, upheld, and widely applied. The Sherman, Clayton, Robinson-Patman, and Federal Trade Commission Acts are all largely tied to the concept that artificial restrictions upon local markets can, if permitted to go unchallenged, ultimately interfere with interstate commerce. Practically every category of business has felt the bite of the antitrust laws, including local bakeries, *Moore* v. *Mead's Fine Bread*, 348 U.S. 115 (1954); local contractors, *U.S.* v. *Employing Plasterers Association*, 347 U.S. 186 (1954); local liquor dealers, *Hanf* v. *U.S.*, 235 F. 2d 710 (C.A. 8, 1956), certiorari denied, 352 U.S. 880 (1956). In direct association with the categories of coverage of title II, the courts have upheld Federal antitrust regulation of motion pictures, *U.S.* v. *Crescent Amusement Company*, 323 U.S. 173 (1944); *Interstate Circuit* v. *U.S.*, 306 U.S. 208 (1939). Legitimate theaters have been covered as in *U.S.* v. *Shubert*, 348 U.S. 222 (1955); while professional sports have

been included in such decisions as *U.S.* v. *International Boxing Club*, 348 U.S. 236 (1954), and *Radovich* v. *National Football League*, 352 U.S. 445 (1957).

Pursuant to the same theory, but also tied in with the concept of social burden, Congress enacted the National Labor Relations Act, the Fair Labor Standards Act and similar pieces of legislation. Taking the NLRA, for example, there developed a general revulsion against the violence and turmoil that resulted from labor unrest. A continuation could have caused havoc to our political and social structure. At the same time, however, labor unrest was, through work stoppages and slowdowns, producing a recognized impediment to interstate commerce—and thereby the national economy. In the case of *NLRB* v. *Jones and Laughlin Steel Corporation*, 301 U.S. 1 (1936), the NLRA was upheld and the Government was given sanction to take jurisdiction over intrastate businesses which had an effect, even if indirect, upon interstate commerce. See also *NLRB* v. *Fainblatt*, 306 U.S. 601 (1945).

Since the validity of the NLRA has been sustained, practically every category of business has become involved and, generally, the type and size of business which would regularly be considered intrastate in nature. Retail meat markets, *Meat Cutters* v. *Fairlawn Meats*, 353 U.S. 20 (1957); retail auto dealers, *Howell Chevrolet Company* v. *NLRB*, 346 U.S. 482 (1953); local fuel dealers, *NLRB* v. *Reliance Fuel Corporation*, 371 U.S. 224 (1963); and many others. Directly related to those categories specified in title II, places of lodging have been covered, *Hotel Employees* v. *Leedom*, 358 U.S. 99 (1958); also, department stores, *May Department Stores Company* v. *NLRB*, 326 U.S. 376 (1945); and theaters, *NLRB* v. *Combined Century Theaters*, 278 F. 2d 306 (C.A. 2, 1960).

Finally, the Fair Labor Standards Act was enacted by Congress with the same social and economic principles in mind as the National Labor Relations Act. In the same manner, the Court upheld the right of Congress to regulate intrastate activities which have a direct bearing on interstate commerce. In *U.S.* v. *Darby*, 312 U.S. 100, 118 (1941), the Supreme Court laid down a clear criteria in this regard which has since been followed:

> The power of Congress over interstate commerce is not confined to the regulation of commerce among the States. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate the interstate commerce.

And, since the enactment of this act, practically every classification of business has met the test of interstate commerce. Publication of a local newspaper, *Mabee* v. *White Plains Publishing Company*, 327 U.S. 178 (1946); local ice dealers, *Gordon* v. *Paducah Ice Mfg. Co.*, 41 F. Supp. 980 (W.D. Ky., 1941); window-washing concerns, *Martino* v. *Michigan Window Cleaning Company*, 327 U.S. 173 (1946); wrecking and towing services on turnpikes, *Crook* v. *Bryant*, 265 F. 2d 541 (C.A. 4, 1959).

Therefore, whether it be the desire to encourage greater Negro travel in interstate commerce, elimination of turmoil which dis-

courages the flow or the transfer and exchange of financial wealth and personnel in interstate commerce, or other impediments to the free flow of goods in interstate commerce, Congress possesses adequate constitutional authority to enact title II. This is especially so when its purpose is linked with the desire to correct moral abuse.

Naturally, we would prefer that the desegregation of public facilities take place on a voluntary basis. Persuasion and commonsense have been instrumental in lowering the color bar in many communities. This voluntary form of behavior will, we hope, continue and grow. But experience has taught that persuasion alone will not suffice. Particularly in a community where a leading hotel or restaurant, for example, holds out, its competitors are reluctant to proceed for fear of economic damage. Thus, in many areas the process must be begun by legal action or the threat of legal action. However, experience has also taught that, once the process is started, the movement toward desegregation advances smoothly and rapidly. Furthermore, example after example has shown that any initial decline in business that may occur with desegregation is readily overcome and business thereafter climbs to new peaks.

For these many reasons, then, we believe that title II represents sound legislation and provides the means for overcoming one of the greatest irritants to racial equality that exists in our Nation today.

TITLE III—DESEGREGATION OF PUBLIC FACILITIES; CIVIL ACTION FOR DEPRIVATION OF RIGHTS

This title, which is an extension of existing law in 42 U.S.C. 1883 and 42 U.S.C. 1885 is a valid and necessary implementation of the 14th amendment.

The U.S. Supreme Court, since 1954, has uniformly struck down State or local government laws and policies which segregate publicly owned or operated facilities. In *Johnson* v. *Virginia*, 373 U.S. 61 (1963), the Court stated that "it is no longer open to question that a State may not constitutionally require segregation of public facilities." In the case of *Wright* v. *Georgia*, 373 U.S. 284 (1963), it was held that a municipality could not arrest and prosecute Negroes who were peaceably seeking the use of city-owned and operated facilities. The municipal judge in the *Georgia* case found that while their conduct had been orderly, their conduct could have provoked a breach of the peace by others. The Supreme Court, in reversing, declared that the mere "possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right to be present." Similarly, in *Watson* v. *City of Memphis*, 373 U.S. 526 (1963), the protestors were charged with breach of the peace and disorderly conduct. The Court in this case ordered a prompt desegregation of the public facilities that were involved stating that the "basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled." However, as the hearings have indicated, there is still a crying need for the opening up of tax-supported facilities to Negroes in certain sectors of this Nation.

With solid Court support for the principal of public facilities open to all, we have sought in title III to authorize the Attorney General to uphold the rights of the individual where he is unable to protect

himself. However, in order to avoid the Attorney General from becoming a gratuitious public counsel for all who claim a denial of equal protection of the laws, this provision is worded to circumscribe the Attorney General's activities to only these most necessitous of circumstances. Not only must the complainant be unable to initiate and maintain legal proceedings for defined reasons, but the Attorney General must find that the institution of an action will materially further the public policy of the United States.

In section 302, there is provided authority for the Attorney General to intervene in cases where an individual claims a denial of equal protection of the laws because of race, color, religion, or national origin. These provisions are vitally necessary if all Americans are to enjoy the equal protection of the laws. It is true that there are now in existence Federal civil statutes which allow the victims of civil rights violations to institute actions for money damages against those who violate their rights. Injunctive relief is also available against government officials who interfere with or deny to an individual his constitutional rights. Unfortunately, however, these remedies are only available to private persons who are able through their own resources to obtain justice.

It is anticipated, however, that the Attorney General will need to intervene in certain key areas. Among these will be restraints by local officials upon the right of free speech, assembly, and petition, as well as the previously discussed suits to end discrimination in public facilities. In addition, attention must be given to denials of equal protection of the law by local officials who force segregation or who, in the administration of justice, treat individuals differently because of race, color, religion, or national origin.

The hearings before the subcommittee this year are replete with narrations of police inequality to civil rights demonstrators. Though being perpetrated by only a very small portion of the police in a limited area of the country, these acts constitute a frightening violation of constitutional rights. The Civil Rights Commission has substantiated many of these claims, and has found a definite pattern of police abuse of civil rights protestors in Jackson, Miss., and Birmingham, Ala. Such abuse has been manifested not only in the violence used to dispel the demonstrations, but in the mistreatment of those arrested. Whether such abuse was dealt out to Negroes, a minority group, or to whites, it violates the 14th amendment in either case. As held in *Lynch* v. *U.S.*, 189 F. 2d 476 (C.A. 5, 1951), cert. den. 342 U.S. 831 (1951), persons under arrest have a right to be tried and punished in the same manner as others accused of crime, and they have an equal right to protection from injury by officers having them in their charge. An injustice done to one person is an injustice to all.

Failure to provide adequate protection to persons asserting their constitutional rights itself is an invasion of the Constitution. When police failed to protect freedom riders in Montgomery in 1961, a Federal district court said:

> The failure of the defendant law enforcement officers to enforce the law in this case clearly amounts to unlawful State action in violation of the equal protection clause of the 14th amendment (*United States* v. *U.S. Klans*, 194 F. Supp. 897 (M.D. Ala., 1961)).

But the Constitution is not self-executing in the protection of individual rights. Implementing legislation is required if the Federal Government is to have the power to protect their rights.

The rights of free speech, assembly, and petition are subject to reasonable regulation and control under the police power of the States, but State laws or orders which are discriminatory in effect must be struck down by the courts as a clear violation of the 1st and 14th amendments. In a similar manner, there is much evidence that equal protection of the laws in this area has been denied by the action of local officials who harass peaceful demonstrators by arrest and prosecution. The Civil Rights Commission has found in Jackson and Birmingham not only a pattern by police to maintain segregation and to suppress protest, but support for that policy by the local prosecutors and courts. There is much evidence that such practices are also maintained in other cities. That such official action is violative of the Constitution was again reiterated this year by the Supreme Court in *Edwards* v. *South Carolina*, 372 U.S. 229 (1963). Here, a group of Negro demonstrators, who were making known their grievances to the State legislature and the public, were arrested and convicted for breach of the peace. The Court, finding that the demonstrators had been orderly, had not obstructed traffic and that there had been no threat of uncontrollable violence from bystanders, reversed the convictions. "(I)n arresting, convicting, and punishing the petioners under the circumstances disclosed by this record, South Carolina infringed the petitioner's constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of grievances" (p. 235). The Court concluded that the exercise of the first amendment freedoms could not be abridged "* * * unless shown likely to produce a clear and present danger of a serious evil that rises far above public inconvenience, annoyance, or unrest" (p. 237).

No man should be forced to bear unwarranted discrimination and thus be denied the equal protection of the law because he cannot fully invoke in a court of law the constitutional protections that are his by right.

TITLE IV—EDUCATION

On May 17, 1954, the Supreme Court of the United States in the momentous *Brown* v. *Board of Education* decision held that enforced racial segregation in public education is a denial of the equal protection of the laws guaranteed under the 14th amendment to the U.S. Constitution and of the due process of law required by the 5th amendment. Overturning the heretofore constitutional "separate but equal" doctrine, the Court held that "separate educational facilities are inherently inequal." The Court said that the opportunity for an education, "where the State has undertaken to provide it, is a right which must be made available to all on equal terms."

In implementing the decision of the Supreme Court, we urge the Congress to be guided by two fundamental premises: (1) The American system of public education—an essential bulwark of a democratic system of government—should be preserved unimpaired; (2) the constitutional right to be free from racial discrimination in public education must be realized.

A number of communities—in response to the Court decision—took immediate steps to implement desegregation in the public schools.

Greatest initial progress in the 17 States and the District of Columbia which had required segregation occurred in metropolitan areas (Washington, Baltimore, Wilmington, St. Louis, and Kansas City, Mo.) and in the border States: Missouri, Oklahoma, Maryland, West Virginia, and parts of Texas. Desegregation in these areas was accomplished largely without incident.

The following chart outlines the early progress in the desegregation of school districts.

TABLE 1.—*Progress in desegregation of school districts, 1954–59*

	Total number of school districts 1958–59	Total biracial districts—both segregated and desegregated 1958–59	Number of districts newly desegregated in school year beginning September.					Total desegregated May 1959	Number desegregated by court order	Number segregated May 1959
			1954	1955	1956	1957	1958			
Alabama	113	113	0	0	0	0	0	0	0	113
Arkansas	423	228	2	2	1	4	0	9	1	219
Delaware	97	57	13	0	1	0	0	14	2	43
District of Columbia	1	1	1					1	0	0
Florida	67	67	0	0	0	0	0	0	0	67
Georgia	200	198	0	0	0	0	0	0	0	198
Kentucky	215	175	0	37	71	8	7	123	7	52
Louisiana	67	67	0	0	0	0	0	0	0	67
Maryland	24	23	1	8	11	3	0	23	2	0
Mississippi	151	151	0	0	0	0	0	0	0	151
Missouri	3,600	243	114	39	40	16	2	211	0	32
North Carolina	172	172	0	0	0	3	1	4	0	168
Oklahoma	1,469	271	0	124	70	22	22	238	4	33
South Carolina	107	107	0	0	0	0	0	0	0	107
Tennessee	152	141	0	1	1	1	0	3	2	138
Texas	1,050	722	1	73	48	1	1	124	0	598
Virginia	129	128	0	0	0	0	4	4	4	124
West Virginia	55	43	22	13	5	3	0	43	4	0
Total	8,692	2,907	154	297	248	61	37	797	26	2,110
Number acting under court order, by years			2	3	4	9	9			

Source: From the Report of the U S. Commission on Civil Rights, 1959, p. 296.

By the close of the school year 1956–57, a total of 699 southern and border school districts had implemented desegregation plans. Significantly, only 9 of the 699 acted under the compulsion of Court order. By May 1959, there were 797 desegregated biracial districts—a small fraction of the number of districts which could be desegregated.

The period 1959–61 was marked by two significant trends which slowed the pace of school desegregation. Progress was hampered by consolidation of school districts and by the failure to implement desegregation plans.

The following chart indicates that heavy consolidation of school districts occurred in Delaware, Georgia, Kentucky and especially Missouri, Oklahoma, and Texas which caused a reduction in the number of biracial districts. The reduction which occurred in Missouri and Oklahoma caused a decline in the total number of desegregated school districts.

TABLE 2.—*Progress in desegregation of school districts, 1959–61*

	Total school districts, 1960–61	Total biracial districts—segregated and desegregated, 1960–61	Desegregated, May 1959	School districts		Desegregated by court order, 1959–61	Desegregated, May 1961	Segregated, May 1961
				1959–60	1960–61			
Alabama	114	114	0	0	0	0	0	114
Arkansas	422	228	8	1	1	0	10	218
Delaware	93	50	13	7	5	3	24	26
District of Columbia	1	1	1	0	0	0	1	0
Florida	67	67	0	1	0	0	1	66
Georgia	198	196	0	0	0	0	0	196
Kentucky	211	170	123	6	0	0	128	42
Louisiana	67	67	0	0	1	1	1	66
Maryland	24	23	23	0	0	0	23	0
Mississippi	151	151	0	0	0	0	0	151
Missouri	1,889	214	200			0	200	14
North Carolina	173	173	4	3	3	1	10	163
Oklahoma	1,276	241	187	0	2	0	189	52
South Carolina	108	108	0	0	0	0	0	108
Tennessee	154	143	3	1	2	3	6	137
Texas	1,531	720	124	3	1	1	128	592
Virginia	130	128	4	2	5	4	11	117
West Virginia	55	43	43	0	0	0	43	0
Total	6,664	2,837	733	24	20	13	775	2,062
Percent			25.8				27.3	72.7

Source: From U.S. Commission on Civil Rights Report on Education, 1961, p. 236.

A second factor was responsible for the decrease in the total number of desegregated school districts from 797 in 1959 to 775 in 1961. Although desegregation had taken place in 44 school districts during that period, a number of school districts which had commenced desegregation either reverted to segregation or failed to take any steps to carry out their own desegregation policy. It is also clear that as opposition to the Supreme Court decision hardened there has been an increased reliance on court action creating the necessity for the Attorney General to intervene as a friend of the Court.

TABLE 3.—*Status of desegregation of school districts, 1962–63 (Aug. 1, 1963)*

	Total school districts, 1962–63	Total biracial districts segregated and desegregated, 1962–63	School districts desegregated	School districts segregated
Alabama	114	114	0	114
Arkansas	416	228	12	216
Delaware	87	87	87	0
District of Columbia	1	1	1	0
Florida	67	67	10	57
Georgia	198	182	1	181
Kentucky	205	166	149	17
Louisiana	67	67	1	66
Maryland	24	23	23	0
Mississippi	150	150	0	150
Missouri	1,607	213	203	10
North Carolina	173	173	18	155
Oklahoma	1,180	241	196	45
South Carolina	108	108	0	108
Tennessee	154	143	26	117
Texas	1,461	919	177	742
Virginia	130	128	32	96
West Virginia	55	43	43	0
Total	6,197	3,053	979	2,074
Percent			32.1	67.9

Source: From report of the U.S. Commission on Civil Rights, 1963, p. 64.

During this most recent period the number of desegregated school districts has increased. Progress was centered primarily in Delaware, Kentucky, and Texas. In spite of progress, however, three States, Alabama, Mississippi, and South Carolina, continued to have no Negroes attending school with white students below the college level.

What perhaps is most remarkable about recent patterns of school desegregation is that while consolidation of school districts continued unabated during the period 1962–63, the number of biracial districts has shown a substantial increase. This has in turn caused a percentage decline in the number of the desegregated school districts. For the crux of the matter is that while there may be more biracial school districts which have commenced desegregation, there are almost as many segregated school districts in late 1963 as there were at the end of 1959. In short, by running hard we have succeeded in standing still.

Year	Total school districts with Negro and white pupils	School districts desegregated	School districts segregated
1959	2,907	797	2,110
1961	2,837	775	2,062
1963	3,053	979	2,074

With the commencement of the 1963–64 school year, some 150 school districts, including districts in Alabama and South Carolina (according to the Southern School News), spurred by the tragic rush of recent events announced that they would begin desegregation sometime during the present academic year. We hope that this will be an augury of progress. Nevertheless, at this pace, it will still take until the year 2063 before the compliance order of the 1955 Supreme Court decision which called for school desegregation in biracial school districts "with all deliberate speed" will be carried out. This must be remedied by affirmative congressional action.

During the past decade vigorous opposition to desegregation has led to legal measures aimed at restricting and circumventing the mandate of the *Brown* decision. The various legal attempts to avoid the consequences of desegregation can be divided into four major categories: (1) A number of Southern States have introduced one or more of the multiple variables of the pre-Civil War doctrines of interposition and nullification. The Supreme Court has dealt summarily with devices such as a State withdrawing its consent to be sued or justifying segregation as an exercise of police power. (2) Other States have entered upon a course of action aimed at disqualifying potential plaintiffs most notably the NAACP (which in the absence of governmental initiative has by default shouldered most of the burden of instituting litigation) from bringing court actions to end segregation. The basic issue came before the Supreme Court in 1958 in *N.A.A.C.P. v. Alabama ex. rel. Patterson* (357 U.S. 449 (1958)), when the court struck down the Alabama law which compelled the NAACP to produce records indicating the names and addresses of members and agents on the ground that such a requirement was an unconstitutional restraint upon the members' right to freedom of association and thus a denial of due process of law. (3) A number of States have imple-

mented pupil placement and assignment laws which alter the theoretical basis of separation from a classification based on race to one dependent on such factors as "scholastic aptitude," "room and teaching capacity," "free choice of pupil," and "home environment." In the crucial case of *Shuttlesworth* v. *Birmingham Board of Education* (358 U.S. 101 (1958)) the U.S. Supreme Court upheld as valid on its face the Alabama pupil placement law on the assumption that the law would be administered in a constitutional fashion. (4) The fourth category comprises the various devices employed to separate the operation of the schools from the state. This generally involved the establishment of a "private-public" school system as a means of circumventing desegregation and in some cases the closing of schools. But this device has failed to provide an effective escape from the law of the land. In 1959, the Supreme Court of Virginia decided after action had been instituted by white parents seeking the reopening of the Norfolk public schools that the State school closing laws violated the Virginia Constitution, *Harrison* v. *Day* (106 S.E. 2d 636 (Va. 1959)). Nevertheless, the net result has been massive delay in implementing the mandate of the Court.

In our judgment the Congress has a clear obligation to act in three areas.

The Government has for some time abdicated its responsibility to acquire accurate information concerning the state of public education in the United States. If the Nation is to achieve desegregation in public education, it requires complete and accurate information concerning the ethnic composition in the public schools.

Therefore, the Judiciary Committee, in H.R. 7152, has authorized the Commissioner of Education to conduct a survey and report to Congress within 2 years concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States.

The transition from all-Negro to integrated schools is at best a difficult problem of adjustment for teachers and students alike. Many teachers and officials have been harassed and obstructed from doing their jobs. The gap in scholastic achievement of students is often considerable. The hurdles that must be overcome in teaching biracial classes and in administering biracial school systems are similarly tremendous. There is an obvious need to provide special counseling, guidance, and remedial instruction to overcome the past deprivation caused by inferior schools. For no matter how the opponents of this legislation may complain to the contrary public education may have been separate but it was seldom equal.

It is clear then that the Congress must enact legislation empowering the Federal Government to disseminate information concerning desegregation plans, problems, and possible solutions, and that it must provide technical and financial assistance to local school officials to enable them to overcome the difficult problems which accompany the desegregation of the public schools.

The committee, therefore, authorized in title IV the Commissioner of Education to extend technical and financial assistance to school boards and school personnel where such assistance would aid in solving problems of desegregation. The committee failed to extend this assistance to problems frequently referred to as "racial imbalance,"

as no adequate definition of this concept was put forward. The committee also felt that this could lead to the forcible disruption of neighborhood patterns, might entail inordinate financial and human cost and create more friction than it could possibly resolve.

We have tried to point out that the progress in school desegregation so well commenced in the period 1954–57 has been grinding to a halt. The trend observed in 1957–59 toward desegregation by court order rather than by voluntary action has continued. It is not healthy nor right in this country to require the local residents of a community to carry the sole burden and face alone the hazards of commencing costly litigation to compel school desegregation. After all, it is the responsibility of the Federal Government to protect constitutional rights. This responsibility is not being shouldered when the U.S. Government is only free to enter a desegregation suit as amicus curiae, unless of course a court decree should already be in effect. We do not think it is proper to require organizations such as the NAACP to take the lead here either. This is the peoples' responsibility and it must be carried out.

The committee, therefore, has adopted a provision authorizing the Attorney General, upon receipt of a signed complaint, to institute a legal action in behalf of schoolchildren or to intervene in a legal action already commenced in behalf of school children in order to desegregate public schools and colleges. This proposal has received bipartisan support for many years.

TITLE V—CIVIL RIGHTS COMMISSION

During a brief but active life the U.S. Commission on Civil Rights has made an essential contribution to the national awareness of denials of constitutional rights. A creation of the Civil Rights Act of 1957, the Commission has held hearings in many parts of the country. It has engaged in intensive research and investigations in the areas of voting rights, denials of equal opportunity and protection in housing, education, employment, and the administration of justice. It has presented its findings clearly and usefully in its reports and recommendations.

The Commission has exposed numerous injustices and indignities thrust upon our Negro citizens. It has gained the confidence and cooperation of individuals and groups with similar goals and has provided them with expert guidance and assistance. For many the Commission has become a symbol of the massive struggle to secure equal rights for all Americans.

The important contribution made by the Commission has been achieved under almost impossible handicaps. It has labored constantly in a climate of uncertainty over its future. It has had, and unless it is made permanent will continue to have, serious difficulties in recruiting and retaining the services of top caliber personnel. Each time, as the Commission draws nearer to its demise, the unfortunate state of its morale is attested to by a rash of resignations. This is in no way a reflection on the dedication of the employees, but rather a reflection upon the system which saves it each time only after an 11th hour reprieve. By attaching riders to appropriations bills in 1959 and 1961 Congress assured 2-year extensions of the Commission's life. This year through an amendment to a private bill Congress gave the Commission an additional year of life.

The second handicap imposed by the Commission's impermanent status is the constant harassment and obstruction which it faces. With its very existence hanging by a thin thread, it cannot steer an independent course. A good example of this problem was the attempt of the Civil Rights Commission to hold hearings in Mississippi. Last December the Commission's planned hearings in Mississippi on voting discrimination, economic reprisal, education, Federal programs, and other matters were postponed as a result of strong persuasion from the Justice Department which feared that the Commission's presence might prejudice the Government's case against Governor Barnett. While the hearings were repeatedly postponed at the urging of the Justice Department, the blame for the failure to hold the hearings fell on the Commission.

Situations such as this clearly demonstrate the importance of a permanent independent Commission. Both of our great political parties made specific pledges in their 1960 platforms to make the Civil Rights Commission a permanent body. It is time we honored those pledges.

Title V, therefore, provides for a permanent Commission on Civil Rights. The Commission is also authorized to serve as a national clearing house for information concerning equal protection of the laws, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, transportation, and the administration of justice.

Finally, title V gives the Civil Rights Commission additional authority to investigate instances of vote fraud, including the denial of the right to have one's vote properly counted.

When our committee reported out a bill in the 87th Congress to extend the life of the Civil Rights Commission, this provision, known as the Cramer Amendment (sponsored by our colleague on the committee, Representative William Cramer, of Florida) received the approval of the committee at that time.

Again in 1957 an amendment was adopted by the House during debate on the civil rights bill which empowered the Commission to investigate voting irregularities, but the amendment failed to survive the legislative journey.

Vote fraud is a widespread phenomenon. Thousands of Americans go to the polls every year never knowing whether their votes will be counted honestly. This is not just a local or regional problem; it is a problem that has constitutional overtones and affects all Americans. Reliable studies made by the Honest Ballot Association and other civic groups indicate that more than 1 million votes are "stolen or lost" in every national election—through such time-tested devices as "chain balloting," "tombstone voting," "ghost" election boards, false canvasses, vote buying, multiple voting, disqualification of valid voters, qualification of invalid voters, and falsification of voters' affidavits. Other devices include rigged election machines, jammed machines, and tampering with absentee ballots.

We have been told that the Commission on Civil Rights should not be involved in this area; that it is more properly the province of the Department of Justice. In a letter to Congressman Cramer on March 22, 1962, the then Deputy Attorney General Byron R. White stated:

> * * * that the problem of election frauds is essentially one of law enforcement and the Commission is not a law enforcement agency. Its primary purpose is to collect and accumulate data so that a more intelligent study of the civil rights problem may be made.

Of course, the Civil Rights Commission is not an enforcement agency. We are not asking the Commission to become one. We are calling upon it through this provision "to collect and accumulate data" on this problem because we believe and are certain that our view is shared by all Americans that the right to vote is meaningless unless one's vote is properly counted. They are interrelated and are both civil rights.

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

The policy underlying the enactment of title VI is so fundamentally correct that there is little need for an additional statement in its behalf.

Section 601 concisely announces this policy, which must be the policy of the Government of the United States and all its citizens who support the Constitution.

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Testimony before the House Judiciary Subcommittee and data gathered by the Civil Rights Commission is available which demonstrates that in many regions of the country, citizens are denied the equal benefits from Federal financial assistance programs because of their color.

The Hill-Burton Act is a relevant case in point. Under this act, Federal funds are granted to assist in the construction and equipment of public and voluntary general, mental, tuberculosis, and chronic disease hospitals. Assistance is also provided for the establishment of other forms of medical care facilities such as nursing homes and public health centers. As of May 1963, $2 billion have been devoted to this purpose by the Government. Despite the extent of this Federal contribution, however, example after example is available which establishes that Negroes are denied equal treatment under the act. Negro patients are denied access to hospitals or are segregated within such facilities. Negro doctors are denied staff privileges—thereby precluding them from properly caring for their patients. Qualified Negro nurses, medical technicians, and other health personnel are discriminated against in employment opportunities. The result is that the health standards of Negroes and, thereby, the Nation are impaired; and the incentive for Negroes to become doctors or to remain in many communities, after gaining a medical education, is reduced.

In a related fashion, racial discrimination has been found to exist in vendor payment programs for medical care of public assistance recipients. Hospitals, nursing homes, and clinics in all parts of the country participate in these programs and, in some, Negro recipients have received less than equal advantage.

The school lunch program is another instance of unfair treatment. Through this program, the Federal Government seeks to provide surplus food in order that needy children may have a nourishing meal at least once a day. Many Negro families, in particular, rely upon this program as a means of maintaining the health of their children. The denial of other rights—especially the lack of equal job opportunities—demands the acceptance of this support. Yet, testimony presented before our committee reveals that Negro children have been denied free lunches on the unfounded claim that their parents could afford to buy their noontime meals.

Similarly, Negro families have been denied access to or eliminated from receiving surplus agricultural commodities which are distributed by the U.S. Department of Agriculture. Whether through coincidence or otherwise, instances of this nature have occurred in counties where resistance was strongest to the Negroes attempt to gain voting rights. Interestingly enough, though, distribution was recommenced when the Federal Government made it clear that it would take over direct distribution unless the counties managed the program fairly.

Billions of dollars of Federal money is expended annually on research. This money which primarily goes to universities and resarch centers for scientific and educational investigation is granted regularly by such agencies as NASA, AEC, the Department of Defense, NIH, Office of Education, and National Science Foundation. Regrettable as it may seem, a number of universities and other recipients of these grants continue to segregate their facilities to the detriment of Negro education and the Nation's welfare.

Funds for guidance training of high school teachers and administrators are also unavailable to Negroes in a number of Southern States, while, in the same regions, schools remain segregated which have been constructed, maintained, and operated by means of Federal financial assistance.

Many additional examples can be cited where Negroes are continuing to be denied equal protection and equal benefits under Federal assistance programs. Vocational and technical assistance, public employment services, manpower development and training, vocational rehabilitation are only a few of the examples which can be cited.

In every essential of life, American citizens are affected by programs of Federal financial assistance. Through these programs, medical care, food, employment, education, and welfare are supplied to those in need. For the Government, then, to permit the extension of such assistance to be carried on in a racially discriminatory manner is to violate the precepts of democracy and undermine the foundations of Government.

In carrying out the commands of title VI, however, the administrators of Federal financial assistance programs must be careful to not punish the innocent along with the guilty. Section 602 prescribes that assistance must not be terminated unless efforts to end discrimination by voluntary means fail.

Generally, we believe that compliance with the provisions of title VI can be accomplished through the application of persuasion and commonsense. In 1962, for example, 11 colleges and universities in the South, rather than face the loss of assistance, agreed to admit qualified Negroes to summer courses which were financed under the National Defense Education Act. A few years previously, the State

of Mississippi decided to open a veterans' hospital to citizens of all races in preference to having no hospital at all. Only this year, Florida and Texas desegrated several schools constructed and maintained under the impacted area laws rather than lose the benefits of these funds.

If voluntary action fails, however, and assistance must be terminated, the termination should be "pinpoint(ed) * * * to the situation where discriminatory practices prevail" as Secretary Celebrezze has stated in his testimony. By this means, the effect upon cutting off funds will be limited to the county or immediate area where racial inequality exists. An unfair burden will not be placed upon those who do not deserve it and innocent recipients will not be punished for the wrongs of others. Moreover, upon the insistence of the gentleman from Ohio (Mr. McCulloch) and other members of the committee, any recipient who has had financial assistance terminated may obtain judicial review of such action.

Spottswood W. Robinson, former Commissioner of the U.S. Commission on Civil Rights, has, we believe, given voice to thoughts which properly summarize our views on title VI. While explaining in testimony before the House Judiciary Subcommittee the Commission's recommendation that the Government consider withholding financial assistance from the State of Mississippi, Judge Robinson stated:

> * * * By this recommendation the Commission was seeking remedial, not penal or punitive, action. What the Commission had in mind was that the expenditure of Federal funds be made in a manner which would benefit all citizens without distinction on account of race or color. What it had in mind were safeguards against the use of Federal funds in a way that encourages or permits discrimination.
>
> The report itself states that the Commission's goal is that all citizens in the United States be assured the full enjoyment of the rights guaranteed by the Constitution.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

In other titles of this bill we have endeavored to protect the Negro's right to first-class citizenship. Through voting, education, equal protection of the laws, and free access to places of public accommodations, means have been fashioned to eliminate racial discrimination.

The right to vote, however, does not have much meaning on an empty stomach. The impetus to achieve excellence in education is lacking if gainful employment is closed to the graduate. The opportunity to enter a restaurant or hotel is a shallow victory where one's pockets are empty. The principle of equal treatment under law can have little meaning if in practice its benefits are denied the citizen.

Testimony supporting the fact of discrimination in employment is overwhelming. The following table contained in the Manpower Report of the President, 1963, prepared by the Department of Labor, presents the dramatic contrast:

TABLE 1.—*Unemployment rates, by color, age, sex, and by selected major occupational group, 1962*

Characteristics, age and sex	White	Nonwhite
Total	4.9	11.0
Male	4.6	11.0
14 to 19 years	12.3	20.7
20 to 24 years	8.0	14.0
25 years and over	3.6	9.4
Female	5.5	11.1
14 to 19 years	11.5	28.2
20 to 24 years	7.7	18.2
25 years and over	4.3	4.8
Selected major occupational group:		
Clerical workers	3.8	7.1
Craftsmen and foremen	4.8	9.7
Operatives	6.9	12.0
Nonfarm laborers	11.0	15.8
Private household workers	3.1	7.1
Service workers, except private household	5.3	10.8

In 1962, nonwhites made up 11 percent of the civilian labor force, but 22 percent of the unemployed. Approximately 900,000 nonwhites were without jobs during the year—thereby constituting an unemployment rate of 11 percent. This was more than twice the rate of white unemployed workers. The breakdown among age, sex, and occupational categories is even more striking as the above table reveals. Moreover, among Negroes who are employed, their jobs are largely concentrated among the semiskilled and unskilled occupations. This has the effect of severely retarding the economic standards of the Negro population. Likewise, concentration at the lower levels of employment heightens the chances of early and long duration layoffs. This is particularly evident today with the rapid upgrading of job skills which is closely associated with automation. The table which follows, included in the manpower report, clearly reflects this unbalanced occupational distribution:

TABLE 2.—*Employed persons by occupational group and color, 1948 and 1962*

Major occupational group	White		Nonwhite	
	1948	1962	1948	1962
Total	100.0	100.0	100.0	100.0
White-collar workers	39.1	47.3	9.0	16.7
Professional and technical	7.2	12.6	2.4	5.3
Managers, officials, and proprietors	11.6	11.9	2.3	2.6
Clerical workers	13.6	15.8	3.3	7.2
Sales workers	6.7	7.0	1.1	1.6
Blue-collar workers	40.5	35.4	39.7	39.5
Craftsmen and foremen	14.6	13.6	5.3	6.0
Operatives	21.0	17.5	20.1	19.9
Nonfarm laborers	4.9	4.3	14.3	13.6
Service workers	7.9	10.6	30.3	32.8
Private household	1.5	2.1	15.6	14.7
All other	6.4	8.5	14.7	18.1
Farmworkers	12.4	6.8	21.0	11.0
Farmers	7.8	4.0	8.5	2.7
Laborers	4.6	2.8	12.5	8.3

Similarly, a comparison of median annual incomes of whites and nonwhites from 1939 to 1960 as published by the Department of Labor, reveals the economic straitjacket in which the Negro has been confined.

TABLE 3.—*Median annual wage and salary incomes of white and nonwhite persons, 1939, 1947, 1957, 1960*

	1939	1947	1957	1960
Males:				
White	$1,112	$2,357	$4,396	$5,137
Nonwhite	$460	$1,270	$2,436	$3,075
Nonwhite as a percent of white	41.4	54.3	55.4	59.9
Females:				
White	$676	$1,269	$2,240	$2,537
Nonwhite	$240	$432	$1,019	$1,276
Nonwhite as a percent of white	30.4	34.0	45.5	50.3

The effect of this severe inequality in employment is felt both on the personal level and on the national level. On the personal level an entire segment of our society is forced into a condition of marginal existence.

From the standpoint of health, the Negro experiences a higher infant mortality rate, a higher incidence of tuberculosis, and a lower life expectancy than whites. The incentive to strive for excellence in employment and education is undermined. Interests in cultural development are undernourished. Interest in social betterment remains retarded. The effect of this is to deny to the Nation the full benefit of the skills, intelligence, cultural endeavor, and general excellence which the Negro will contribute if afforded the rights of first-class citizenship.

The failure of our society to extend job opportunities to the Negro is an economic waste. The purchasing power of the country is not being fully developed. This, in turn, acts as a brake upon potential increases in gross national product. In addition, the country is burdened with added costs for the payment of unemployment compensation, relief, disease, and crime.

National prosperity will be increased through the proper training of Negroes for more skilled employment together with the removal of barriers for obtaining such employment. Through toleration of discriminatory practices, American industry is not obtaining the quantity of skilled workers it needs. With 10 percent of the work force under the bonds of racial inequality, this stands to reason. Similarly, an examination of job openings that are regularly advertised discloses that the country is not making satisfactory use of its manpower. Consider how our shortage of engineers, scientists, doctors, plumbers, carpenters, technicians, and the myriad of other skilled occupations could be overcome in due time if we eliminate job discrimination.

A nation need not and should not be converted into a welfare state to reduce poverty, lessen crime, cut down unemployment, or overcome shortages in skilled occupational categories. All that is needed is the institution of proper training programs and the elimination of discrimination in employment practices.

Twenty-five States have enacted fair employment practice legislation. Through effective enforcement by many States, job in-

equality has been reduced in a number of areas. Similarly, during the administrations of Presidents Truman, Eisenhower, and Kennedy, considerable advance has been made in eliminating racial discrimination in Federal Government employment and in employment connected with Government contracts and subcontracts.

As the above tables have disclosed, however, the incidence and depth of inequality remain widespread. Discrimination continues to exist in all parts of the country.

More positive and enduring steps must be taken, therefore, to cure this evil and before racial unrest eats irretrievably into the body of the American industrial system.

In response to this need, the Judiciary Committee incorporated title VII into H.R. 7152. This title establishes an Equal Employment Opportunity Commission which shall be charged with the task of investigating complaints concerning the existence of discrimination in business establishments, labor unions, and employment agencies.

As the title was originally worded, the Commission would have had authority to not only conduct investigations, but also institute hearing procedures and issue orders of a cease-and-desist nature. A substantial number of committee members, however, preferred that the ultimate determination of discrimination rest with the Federal judiciary. Through this requirement, we believe that settlement of complaints will occur more rapidly and with greater frequency. In addition, we believe that the employer or labor union will have a fairer forum to establish innocence since a trial de novo is required in district court proceedings together with the necessity of the Commission proving discrimination by a preponderance of the evidence.

It must also be stressed that the Commission must confine its activities to correcting abuse, not promoting equality with mathematical certainty. In this regard, nothing in the title permits a person to demand employment. Of greater importance, the Commission will only jeopardize its continued existence if it seeks to impose forced racial balance upon employers or labor unions. Similarly, management prerogatives, and union freedoms are to be left undisturbed to the greatest extent possible. Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices. Its primary task is to make certain that the channels of employment are open to persons regardless of their race and that jobs in companies or membership in unions are strictly filled on the basis of qualification.

The rights of citizenship mean little if an individual is unable to gain the economic wherewithal to enjoy or properly utilize them.

As the following table, included in the manpower report, reveals, the American economy shall be in an increasing need for skilled manpower in the years to come:

TABLE 4.—*Employment by major occupational group, 1960–75*

Major occupational group	Actual, 1960		Projected, 1970		Projected, 1975		Percent change		
	Number (in millions)	Percent	Number (in millions)	Percent	Number (in millions)	Percent	1960-70	1970-75	1960-75
Total	66.7	100.0	80.5	100.0	87.6	100.0	21	9	31
Professional, technical, and kindred workers	7.5	11.2	10.7	13.3	12.4	14.2	43	16	65
Managers, officials, and proprietors, except farm	7.1	10.6	8.6	10.7	9.4	10.7	21	9	32
Clerical and kindred workers	9.8	14.7	12.8	15.9	14.2	16.2	31	11	45
Sales workers	4.4	6.6	5.4	6.7	5.9	6.7	23	9	34
Craftsmen, foremen, and kindred workers	8.6	12.8	10.3	12.8	11.2	12.8	20	9	30
Operatives and kindred workers	12.0	18.0	13.6	16.9	14.2	16.3	13	4	18
Service workers	8.3	12.5	11.1	13.8	12.5	14.3	34	13	51
Laborers, except farm and mine	3.7	5.5	3.7	4.6	3.7	4.3	.....	.....	.....
Farmers, farm managers, laborers, and foremen	5.4	8.1	4.2	5.3	3.9	4.5	−22	−7	−28

NOTE.—Individual items may not add to totals because of rounding.

The employment needs in practically every professional and technical field are expected to rise substantially—teachers, doctors, lawyers, scientists, and engineers. Likewise, the requirements for managers, clerical workers, sales workers, craftsmen, foremen, and similar skilled occupational groups are all projected for large increases. To deny to the Nation the means to fill these needs and, thereby, to maintain its economic superiority is to deny the Nation the ability to continue as the leading country in the world.

Aside from the political and economic considerations, however, we believe in the creation of job equality because it is the right thing to do. We believe in the inherent dignity of man. He is born with certain inalienable rights. His uniqueness is such that we refuse to treat him as if his rights and well-being are bargainable. All vestiges of inequality based solely on race must be removed in order to preserve our democratic society, to maintain our country's leadership, and to enhance mankind.

TITLE VIII—REGISTRATION AND VOTING STATISTICS

Reliable information on voting turnout in the United States is incomplete. There is a general deficiency of data on voting turnout by race, color, or national origin particularly on a comparative basis for States, counties, or congressional districts. Fragmentary material derived from voter samplings taken by public opinion institutes is helpful but not comprehensive enough to be significant. Some States furnish limited information such as total registration figures which in a number of cases are broken down by counties. For example, complete registration figures for Mississippi, South Carolina, and Georgia, as well as many Northern States are unavailable.

At present an imprecise measurement of nonvoting is obtained by subtracting the number of actual voters from the total number of voting age persons. Because of State residence and other requirements this is a highly unreliable means of determining the actual vote.

There is an urgent need therefore for reliable registration figures broken down by State and county. With this information, more complete and accurate statistics can be made available to the general public to help eligible citizens register who have neglected to do so.

Lacking this information, the Commission on Civil Rights has labored under a severe handicap in its factfinding functions. The Department of Justice has also been hindered in its litigation efforts by not having complete and reliable registration and voting statistics. It was this handicap which prompted the Civil Rights Commission in its first report in 1959 and again in 1961 to recommend that the the Bureau of Census be authorized to undertake a nationwide compilation of registration and voting statistics. Although it was not possible to gather such information in conjunction with the 1960 census, the Commission felt nevertheless that there was such a compelling need for these statistics that Congress should determine the feasibility of having a supplementary census.

For some time it has been our belief that such a census is both feasible and of immense value. It was for this reason that the provision was included in H.R. 3139 and identical bills—omnibus legislation introduced on January 31, 1963, by the gentleman from Ohio (Mr. McCulloch), the ranking minority member of our committee, and cosponsored by ourselves and about 40 of our colleagues.

The provision was supported by many who testified before Subcommittee No. 5 during its hearings on civil rights legislation including an official of the AFL–CIO who commended the provision "to the favorable attention of the committee" (July 17, 1963), and the Department of Justice. It was included in the bill favorably reported by the subcommittee on October 2, 1963.

Mild opposition to the scope of the provision was registered by the Bureau of the Census which feared that the cost of the census might be prohibitive. The Department of Commerce preferred that they should have the authority vested directly in the Secretary of Commerce in conformity with the Reorganization Plan of 1960.

Agreement was readily reached in the bill favorably reported by the committee. The provision (sec. 801) now directs the Secretary of Commerce to promptly conduct a survey of registration and voting statistics in areas recommended by the Commission on Civil Rights. The survey will include a count of persons of voting age by race, color, and national origin and a determination to the extent to which such persons are registered to vote and have voted since January 1, 1960.

It is our expectation that the Commission, in accord with the direction of Congress and its own past expression of need for this provision, will recommend that the survey conducted by the Secretary of Commerce be as complete and comprehensive as is feasible. This survey should, if necessary, be national in its scope and not merely limited to the South. There is no question as to the constitutionality, necessity, and potential value of this census.

TITLE IX—PROCEDURE AFTER REMOVAL IN CIVIL RIGHTS CASES

An amendment to the Judicial Code of May 24, 1949, added a new subsection (d) to section 1447 of title 28, United States Code, which provided that the remand by a Federal district judge of a removed

case was not reviewable by a U.S. court of appeals or the U.S. Supreme Court. This provision has been used with extraordinary effectiveness by many southern Federal judges to deny judicial relief for citizens who have been prosecuted in the State courts for exercising their rights guaranteed by the Constitution.

This is a severe and unjustified encumbrance on citizens engaged in the struggle for equal rights. In fact, this inability to appeal remand orders has effectively barred citizens from obtaining a redress to their denial of civil rights. The committee, therefore, adopted a provision (title IX) which makes the remand of a civil rights case to a State court by a Federal court after the case had been removed to the Federal court reviewable by appeal. This is a useful provision which merits support.

CONCLUSION

The United States is a nation of many peoples. The interests of some are not always the interests of all. In sustaining our way of life and in preserving our historic traditions, however, the fundamental rights of each citizen must be protected. And, in order for our Nation to maintain its role as world leader, the hopes and aspirations of minorities must always be safeguarded. The enactment of H.R. 7152, while by no means a panacea, will be a significant beginning.

Every segment of American life must bear a heavy burden in this epochal struggle. Congress must move rapidly—more rapidly than it has to date—to legislate intelligently and effectively in this critical area. The agencies of Government must strive more actively to enforce the law of the land. The courts—State and Federal—must exercise greater vigilance in guarding the interests of all the people. Each citizen must make a greater effort to respect the dignity of his fellow man.

Representative government itself is on trial at this critical juncture in the life of our Nation. With the tragedy of our President's death we have witnessed a glaring example where hatred and intolerance triumphed over compassion and reason. Through the action we take on this important bill, we in Congress can do much to conquer the forces of hatred and intolerance which have been unleashed in our land and thereby revive and sustain the faith of the American people in the viability and strength of our great Nation.

It is a challenge we must not shirk and dare not fail to meet.

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